# MONTANA LEGISLATIVE HISTORY

Chapter 415 19 97

Bill H _____ S 377 Original bill & history ✓ C

| H. Committee on Natural Resources | | S. Committee on Natural Resources | |
|---|---|---|---|
| Hearing Date(s) 3-10 | X C | Hearing Date(s) 2-21 & EXEC ACTION | X C |
| 4/2 | X C | ~~[illegible]~~ | ___ C |
| _____ | ___ C | _____ | ___ C |
| _____ | ___ C | _____ | ___ C |
| Date Out 4-09 | ___ C | | |

- signed by Gv. - 4-28

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

| | | | |
|---|---|---|---|
| 2/20 | HEARING | | |
| 2/20 | FISCAL NOTE RECEIVED | | |
| 2/20 | FISCAL NOTE PRINTED | | |
| 2/21 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/24 | 2ND READING PASSED | 50 | 0 |
| 2/25 | 3RD READING PASSED | 50 | 0 |
| | TRANSMITTED TO HOUSE | | |
| 3/03 | FIRST READING | | |
| 3/03 | REFERRED TO BUSINESS & LABOR | | |
| 3/14 | FISCAL NOTE RECEIVED | | |
| | AMENDED | | |
| 3/14 | FISCAL NOTE PRINTED | | |
| 3/24 | HEARING | | |
| 3/25 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 4/03 | 2ND READING CONCURRED | 96 | 2 |
| 4/04 | 3RD READING CONCURRED | 97 | 2 |
| | RETURNED TO SENATE WITH AMENDMENTS | | |
| 4/08 | 2ND READING AMENDMENTS CONCURRED | 50 | 0 |
| 4/09 | 3RD READING CONCURRED AS AMENDED | 50 | 0 |
| 4/14 | SIGNED BY PRESIDENT | | |
| 4/15 | SIGNED BY SPEAKER | | |
| 4/15 | TRANSMITTED TO GOVERNOR | | |
| 4/16 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 284 | | |
| | EFFECTIVE DATE: 04/16/97—SECTIONS 6, 8 & 9 | | |
| | EFFECTIVE DATE: 01/01/98—SECTIONS 1-5 & 7 | | |

SB 376 INTRODUCED BY HERTEL, ET AL. *LC1395 DRAFTER: CAMPBELL*

TRANSFER THE LICENSING OF DEALERS OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES AND THE REGULATION OF SALES AND DISTRIBUTION OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES TO THE DEPARTMENT OF JUSTICE

BY REQUEST OF SENATE BUSINESS & INDUSTRY COMMITTEE

| | | | |
|---|---|---|---|
| 2/17 | INTRODUCED | | |
| 2/17 | FIRST READING | | |
| 2/17 | REFERRED TO BUSINESS & INDUSTRY | | |
| 2/17 | FISCAL NOTE REQUESTED | | |
| 2/20 | HEARING | | |
| 2/20 | FISCAL NOTE RECEIVED | | |
| 2/21 | FISCAL NOTE PRINTED | | |
| 2/24 | COMMITTEE REPORT—BILL NOT PASSED | | |
| 2/25 | ADVERSE COMMITTEE REPORT ADOPTED | 49 | 1 |

SB 377 INTRODUCED BY GROSFIELD, ET AL. *LC0759 DRAFTER: MITCHELL*

REVISE THE LAWS RELATING TO THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT

| | | | |
|---|---|---|---|
| 2/17 | INTRODUCED | | |
| 2/17 | FIRST READING | | |
| 2/17 | REFERRED TO NATURAL RESOURCES | | |
| 2/17 | FISCAL NOTE REQUESTED | | |
| 2/21 | HEARING | | |
| 2/22 | FISCAL NOTE RECEIVED | | |
| 2/24 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/24 | FISCAL NOTE PRINTED | | |
| 2/25 | 2ND READING PASSED | 47 | 3 |
| 2/26 | 3RD READING PASSED | 46 | 3 |



| | | | |
|---|---|---|---|
| | TRANSMITTED TO HOUSE | | |
| 3/03 | FIRST READING | | |
| 3/03 | REFERRED TO NATURAL RESOURCES | | |
| 3/10 | HEARING | | |
| 4/03 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 4/08 | 2ND READING CONCURRED AS AMENDED | 96 | 4 |
| 4/08 | REVISED FISCAL NOTE REQUESTED | | |
| 4/09 | 3RD READING CONCURRED | 95 | 5 |
| | RETURNED TO SENATE WITH AMENDMENTS | | |
| 4/12 | REVISED FISCAL NOTE RECEIVED | | |
| 4/14 | REVISED FISCAL NOTE PRINTED | | |
| 4/15 | 2ND READING AMENDMENTS CONCURRED | 49 | 0 |
| 4/16 | 3RD READING CONCURRED AS AMENDED | 49 | 1 |
| 4/21 | SIGNED BY PRESIDENT | | |
| 4/21 | SIGNED BY SPEAKER | | |
| 4/21 | TRANSMITTED TO GOVERNOR | | |
| 4/28 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 415 | | |
| | EFFECTIVE DATE: 04/28/97—SECTIONS 5 & 29 | | |
| | EFFECTIVE DATE: 07/01/97—SECTIONS 1, 2, 4, 6-28 & 30 | | |
| | EFFECTIVE DATE: 07/01/99—SECTION 3 | | |

SB 378 INTRODUCED BY BENEDICT, ET AL. *LC0332 DRAFTER: NISS*

REVISE INSURANCE LAWS

| | | | |
|---|---|---|---|
| 2/17 | INTRODUCED | | |
| 2/17 | FIRST READING | | |
| 2/17 | REFERRED TO BUSINESS & INDUSTRY | | |
| 2/17 | FISCAL NOTE REQUESTED | | |
| 2/19 | FISCAL NOTE RECEIVED | | |
| 2/20 | HEARING | | |
| 2/20 | FISCAL NOTE PRINTED | | |
| 2/21 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/25 | 2ND READING PASSED AS AMENDED | 50 | 0 |
| 2/26 | 3RD READING PASSED | 47 | 2 |
| | TRANSMITTED TO HOUSE | | |
| 3/03 | FIRST READING | | |
| 3/03 | REFERRED TO HUMAN SERVICES & AGING | | |
| 3/12 | REVISED FISCAL NOTE RECEIVED | | |
| 3/13 | REVISED FISCAL NOTE PRINTED | | |
| 3/14 | HEARING | | |
| 4/03 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 4/05 | 2ND READING CONCURRED | 87 | 13 |
| 4/07 | 3RD READING CONCURRED | 82 | 18 |
| | RETURNED TO SENATE WITH AMENDMENTS | | |
| 4/11 | 2ND READING AMENDMENTS CONCURRED | 50 | 0 |
| 4/12 | 3RD READING CONCURRED AS AMENDED | 47 | 1 |
| 4/18 | SIGNED BY PRESIDENT | | |
| 4/20 | SIGNED BY SPEAKER | | |
| 4/21 | TRANSMITTED TO GOVERNOR | | |
| 4/28 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 416 | | |
| | EFFECTIVE DATE: 04/28/97—SECTIONS 45 & 53 | | |
| | EFFECTIVE DATE: 07/01/97—SECTIONS 1, 5-8, 17-40 & 42-44 | | |
| | EFFECTIVE DATE: 09/01/97—SECTION 41 | | |
| | EFFECTIVE DATE: 10/01/97—SECTIONS 2-4, 10-16 & 46-52 | | |
| | EFFECTIVE DATE: 01/01/98—SECTION 9 | | |

Senate BILL NO. 377

INTRODUCED BY Grosfield Knox Swanson Keating

Senate Clerk

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING AN OPTIONAL PROCEDURE FOR ALLOCATING LIABILITY FOR SITE REMEDIATION; CREATING AN ORPHAN SHARE FUND ACCOUNT AND ALLOCATING CERTAIN FINES, PENALTIES, RESOURCE INDEMNITY TRUST INTEREST AND TAX PROCEEDS, METALLIFEROUS MINE TAX PROCEEDS, AND OTHER MONEY TO THE ACCOUNT; PROVIDING FOR CITIZEN SUITS; PROVIDING EXCLUSIONS FROM LIABILITY; PROVIDING ADDITIONAL AND SPECIFIC RULEMAKING AUTHORITY; AMENDING PROVISIONS AND EXTENDING THE TERMINATION DATE OF THE MIXED FUNDING PILOT PROGRAM; AMENDING SECTIONS 15-37-117, 15-38-106, 15-38-202, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 75-10-701, 75-10-702, 75-10-704, 75-10-715, 75-10-719, 75-10-720, 75-10-724, 82-4-141, AND 82-4-241, MCA, AND SECTIONS 16, 18, AND 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill.

STATEMENT OF INTENT

SB 377
INTRODUCED BILL

allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

**Section 4.** Section 75-2-412, MCA, is amended to read:

"**75-2-412. Criminal penalties -- injunction preserved.** (1) A person is guilty of an offense under this section if that person knowingly:

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false material statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

(c) renders inaccurate a monitoring device or method required under this chapter.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than $10,000 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified as a misdemeanor. Each day of each violation constitutes a separate violation.

(3) Fines collected under this section, except fines collected by an approved local air pollution control program, must be deposited in the orphan share account in the state ~~general~~ special revenue fund.

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil or administrative remedy. The department may institute and maintain in the name of the state any enforcement proceedings."

**Section 5.** Section 75-2-413, MCA, is amended to read:

"**75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed $10,000 per violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0377, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the laws relating to the state Comprehensive Environmental Cleanup and Responsibility Act(CECRA); providing an optional procedure for allocating liability for site remediation; creating an orphan share fund account and allocating certain fines, penalties, resource indemnity trust interest and tax proceeds, metalliferous mine tax proceeds, and other money to the account; providing for citizen suits; providing exclusions from liability; providing additional and specific rulemaking authority; amending provisions and extending the termination date of the mixed funding pilot program.

ASSUMPTIONS:
**Department of Natural Resources and Conservation (DNRC):**
1. Assume revenue oversight committee revenue estimates.
2. Assume metal mine tax deposits to the RIT trust under current law are $474,045 in fiscal year 1998 and $542,725 in fiscal year 1999. Further, assume these deposits are made on the first of May.
3. Assume that RIGWA tax deposits to the RIT trust under current law are $559,521 in fiscal year 1998 and $551,259 in fiscal year 1999. Further, assume these deposits are made on the first of May.
4. Assume that rate of return on fiscal year 1998 deposits is 6.48% and 6.33% for fiscal year 1999 deposits.
5. Assume that $200,000 per year of RIGWA taxes are available for distribution to the orphan share account (page 5, lines 7-9).
6. Assume that no metal mine tax funds are not deposited into the RIT trust fund.
7. Assume that oil and gas tax deposits to the RIT trust are not affected by SB 377.

**Department of Environmental Quality (DEQ):**
8. The CECRA site list contains 211 sites. Of these, 70 sites will have an orphan share of liability allocated for remedial action costs. These 70 sites are a mix of maximum-high-, and medium-priority.
9. There is sufficient information for 39 of 70 sites to estimate remedial action costs and the potential orphan share. There is insufficient information for the remaining 31 sites to estimate remedial action costs, but they may also have an orphan share of liability. Orphan shares estimates were not made for low-priority sites.
11. This bill provides a controlled allocation of liability option that will redistribute financial responsibility for the orphan share costs on the 39 sites identified between the state and private entities.
12. The department will negotiate the allocation of liability for orphan share remedial action costs on the 39 sites that have been identified and where the controlled allocation of liability option is used. The bill controls the number of orphan share allocation proceedings that can occur at one time and limits this number to five.
13. Currently, the assignment of responsibility for remedial action costs on 39 sites where there is an orphan share under the joint and several liability system are estimated to range from $8 million to $20 million.
14. Allocation of liability for the 39 sites identified increases the state's financial responsibility by $22 to $30 million.
15. During the next 5 years, cleanup is expected to begin or continue at 18 of the 39 sites that have been identified, with estimated orphan share costs of approximately $9 million to $11 million and the controlled allocation of liability option will be used for all 18 sites.
16. During the following 6 to 10 years, cleanup will begin at 8 of the 39 sites that have been identified, with an estimated orphan share of approximately $16 million to $18 million and the controlled allocation of liability option will be used for all 8 sites.

(Continued)

Dave Lewis 2-24-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Lorents Grosfield
LORENTS GROSFIELD, PRIMARY SPONSOR DATE

17. After 10 years, cleanup will begin at the remaining 13 sites, with an estimated orphan share of approximately $17 million to $19 million and the controlled allocation of liability option will be used for all 13 sites.
18. The orphan share state special revenue account will be used to reimburse potentially-liable persons (PLPs) who are participating in the controlled allocation of liability option.
19. The department will only reimburse claims for payment of orphan share remedial action costs if the balance of the orphan share account is sufficient to cover the cost of the claim. Reimbursement is not required if the account balance is insufficient to reimburse a claim and no interest will accrue on unpaid claims.
20. Remedial actions, except for operation and maintenance, must be completed before a claim is submitted and before orphan share costs are reimbursed. Operation and maintenance costs will not be reimbursed. The department expects no claims for orphan share remedial action costs to be reimbursed in the next biennium.
21. The department requires 1.00 FTE program specialist (grade 16) with operating expenses to participate in the liability allocation process for sites with likely orphan shares. Projected operating expenses include $5,000 in FY 98 for equipment, $13,000 per year in the biennium for contracted services, and $15,000 per year for travel, office expenses, and supplies.
22. Fines and penalties revenues reallocated from the general fund to the orphan share account will be $650,000 in FY 98 and $670,000 in FY 99 (HJR 2). [Although the full amount is shown in the bill based on Sections 4-15, if HB 284 is passed and approved, the first $250,000 would be allocated in accordance with that bill.]
23. The 8.5% metalliferous mines license tax proceeds will not be deposited into an abandoned mine state special revenue account this biennium [Amendment adopted 2/21/97 by the Senate Natural Resources Committee].

**Department of Revenue (DOR):**

24. Metalliferous Mines License Tax collections are $5,578,000 in fiscal year 1998 and $6,385,000 in FY99 (HJR2).

**General Assumptions:**

25. The reductions in revenue distribution to four state special revenue accounts total $58,835 for the 1999 biennium. If any of these reductions cause a deficit in any of the associated accounts, some minor amount of state expenditures in HB 2 will be transferred to the general fund at the end of the session.
26. Based on assumption 25, the agencies and programs potentially impacted by SB 377 are not all listed herein.
27. Funding would be available for payment of clean-up costs at CECRA sites. Under current law, the responsible parties bear these costs. Under SB 377, the state may pay for these clean-up costs if all or portions of the original contamination was caused by a party (or parties) that is bankrupt or defunct or for some other reason these costs are not associated with any viable person. During the 1999 biennium the revenue will be deposited in the orphan share account and administrative expenses will be paid from the account. However, actual clean-up disbursements from the new orphan fund may not occur in the 1999 biennium because of the time necessary to proceed through the process and to clean-up the site.

FISCAL IMPACT:

**Department of Environmental Quality (DEQ)**

| Expenditures: | FY98 Difference | FY99 Difference |
|---|---|---|
| FTE | 1.00 | 1.00 |
| Personal Services | $37,340 | $37,340 |
| Operating Expenses | 34,348 | 34,348 |
| Equipment | 5,000 | 0 |
| Total | $76,688 | $71,688 |
| **Funding:** | | |
| State Special Revenue (02) | $76,688 | $71,688 |

(Continued)

**DNRC & DEQ Assumptions:**

Revenues:
By diverting proceeds away from the RIT trust and using these funds for other purposes, SB 377 does impact RIT trust fund earnings. This impact would be felt in the four special revenue accounts that now receive RIT interest earnings. The impacts are:

| | FY 98 Difference | FY 99 Difference | Total |
|---|---|---|---|
| Renewable Resource Account (02272): | ($2,628) | ($18,553) | ($21,181) |
| Reclamation and Development Account (02458): | (2,920) | (20,614) | (23,534) |
| Hazardous Waste/CERCLA Account (02070): | (1,314) | (9,276) | (10,590) |
| Environmental Quality Protection Fund (02162): | (438) | (3,092) | (3,530) |
| Subtotal Interest Impact | ($7,300) | ($51,535) | ($58,835) |
| | | | |
| RIT Trust Deposits | (674,045) | (742,725) | (1,416,770) |
| RIT Proceeds | (200,000) | (200,000) | (400,000) |
| Orphan Share Fund (8.5%) | 674,045 | 742,725 | 1,416,770 |
| Orphan Share Fund (balance of $200K) | 123,312 | 128,312 | 251,624 |
| Penalty Revenue to Orphan Share Fund | 650,000 | 670,000 | 1,320,000 |
| DEQ Penalties Deposits to General Fund | (650,000) | (670,000) | (1,320,000) |
| | | | |
| Net Impact on Fund Balance: (Revenues - Expenditures) | | | |
| General Fund (01) | ($650,000) | ($670,000) | (1,320,000) |

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
To the extent that a county or local government is a responsible party under the CECRA legislation, under current law they may be held responsible for the entire clean-up costs. SB 377 would set up a process through which local governments may be able to reduce this liability to a portion of the costs associated with the portion of the pollution caused by the local government.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
1. To fully fund the orphan fund, significant increases in revenue will be needed. Orphan share remedial action costs over the next 10 to 15 years are estimated to range from $42 million to $48 million. It is anticipated that $3 to $4 million per year will be required to fully fund the orphan share costs of known CERCRA site clean-up projects.
2. Beginning in fiscal year 2000, the proposed legislation will annually allocate $200,000 from the resource indemnity trust fund interest income to the orphan share account, in addition to the $200,000 from the proceeds of the tax. This allocation to the orphan share account will result in the following annual reductions after FY99. The 1999 legislature would need to either reduce appropriation authority for currently-funded programs or find alternative sources of funding.

| | |
|---|---|
| Renewable Resource State Special | ($72,000) |
| Hazardous waste/CERCLA | ($36,000) |
| Reclamation & Development State Special | ($80,000) |
| Environmental Quality Protection Fund | ($12,000) |

TECHNICAL NOTES:
1. HB 284 does not create an orphan share account. Section 41 (2) and (3) should be amended to reflect this fact.
2. Section 2 of the proposed legislation amends MCA 15-38-106 to allocate up to $200,000 of the remaining revenues from the resource indemnity and groundwater assessment Tax (RIGWAT) to the orphan share account. It should be noted that the current law distribution instructions already allocate 100% of RIGWAT revenues; therefore, there would be no remaining revenues to allocate to the orphan share account.
3. Sections 4 - 15 reallocate all DEQ fines and penalty revenues from the general fund to the orphan share account. Virtually all of this revenue is from air quality violations and the general fund impact is about $660,000 per year.
4. HB 284, which has passed the House, provides that the first $250,000 of fines and penalties be used for environmental remediation and is coordinated with SB 377 in Section 27(2)(b).

(Continued)

TECHNICAL NOTES: (Continued)

5. Moreover, apparently there is an "agreement" among some of the parties supporting th proposed legislation that the fines and penalties revenues should be estimated at th 1993-1996 four-year average of $400,000 rather than the HJR 2 estimates used in thi fiscal note. If $400,000 were used, and the first $250,000 were assumed to apply t HB 284, then the amount of $150,000 would be remaining for application to this bil

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay (Please explain)

Yes. (1) The public at large will benefit from a more clean and healthf environments. (2) Business and industries that are liable parties but have no contributed to the tax will benefit because their cleanup costs may be reduced.

b) What special information or other advantages exist as a result of using a state specia revenue fund that could not be obtained if the revenue were allocated to the genera fund?

If the revenue were allocated to the general fund, there the would be no guarantee tha appropriations would be made to meet the intent of this bill (cleanup CECRA sites wit costs shared among PLPs and an orphan share).

c) Is the source of revenue relevant to current use of the funds and adequate to fund th program/activity that is intended? _____ Yes __x__ No (if no, explain)

The revenue identified at this time will not cover the potential cost of cleanu reimbursement for the short term. If the account and statutes are maintained wit continued appropriations, this fund is projected to be adequate.

d) Does the need for this state special revenue provision still exist? __X__ Yes _____ No (Explain)

This legislation establishes this state special revenue account and provisions for th use of the funds in the account.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets control expenditures, or establish priorities for state spending? (Please explain)

No. This revenue and expenditure activity level will be requested to each regular bo through legislation separate from HB2.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized nee (Please explain)

Yes. Through passage of this bill the legislature will establish the activiti required by statute as a priority.

g) How does the dedicated revenue provision result in accounting/auditing efficiencies o inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

A dedicated state special revenue account will assist the department in tracking th revenue and expenditure activity as a result of this legislation. It will be the on activity accounted for in this state special revenue account. If this activit received general fund the agency could adequately account for the program/activit However, then there would be a concern for the long-term appropriations to th project.

# MINUTES

## MONTANA SENATE
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 21, 1997, at 3:00 PM, in Room 405.

### ROLL CALL

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

| | | |
|---|---|---|
| Hearing(s) & Date(s) Posted: | | SJ 11, Posted Feb.20,1997<br>SB346, SB380, SB377 Posted Feb. 18, 1997 |
| | Executive Action: | SB377, SB380, SJ11, SB356, SB363 |

### HEARING ON SJ 11

Sponsor: SENATOR STEVE DOHERTY, SD 24, GREAT FALLS

Proponents: Patrick Judge, Montana Environmental Information Center (MEIC)
Tara Mele, Mont PIRG
Ted Lange, Northern Plains Resource Council (NPRC)

Opponents: John Fitzpatrick, Mt. Mining Assn.
Larry Brown, Northern Mt. Oil and Gas Assn. and Ag Preservation Association.

## HEARING ON SB 346

**SEN. BEA MCCARTHY, SD 29, Anaconda,** requested to table bill SB346. She explained that for the last nine months a local committee had been working on this proposal and attempted for some period of time prior to this, to meet with the attorney general's office, with unsatisfactory results. The negotiations between the group were headed by Jim Flynn of Anaconda, Chris Tweeten of the Attorney Generals Office, and Judy Browning of the Governor's Office. She stated that last night they had got together and had a signed agreement by all the concerned parties. With the group's permission, she would like the committee to table the bill.

## EXECUTIVE ACTION ON SB 346

Motion/Vote: SEN. VAN VALKENBURG MOVED TO TABLE SB 346, MOTION CARRIED UNANIMOUSLY.

At this point in the meeting **CHAIRMAN GROSFIELD** handed over the gavel to **VICE CHAIRMAN CRISMORE.**

## HEARING ON SB 377

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Denise Mills, Administrator, Remediation Division, Dept. of Environmental Quality, (DEQ)
Page Dringman, PLP Caucus Rep.
Anne Hedges, Mt. Environmental Information Center (MEIC)
Peter Nielsen, Missoula County Health Dept.
Steve Brown, PLP Caucus, Missoula
Ester Nelson, Local Government Caucus, Bozeman
Don Allen, Montana Wood Products Association
Ward Shanahan, PLP Caucus Alternate, ARCO
Lisa Hallenbeck, Attorney, Poore, Roth & Robinson

Opponents: None

Opening Statement by Sponsor:

**SENATOR LORENTS GROSFIELD, SD 13, Big Timber,** said that SB 377 arose out of SB 382 from last session. This bill was a long complicated bill with one of the goals being to do away with joint and several liability in our environmental laws. The committee found this provision somewhat harsh and decided to replace it with a provision that would require a study. The study was to be done by the Dept. of Environmental Quality and in a manner as stated on page 1 of the bill, "to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities." The Dept.

started the process, went through all the correct proceedings, formed a wide spectrum of interested parties for representation, and through a very lengthy consensus process, arrived with a consensus on all points. **SEN. GROSFIELD** said SB 377 is a consensus on all points, and handed out the amendment. **(EXHIBIT 2)**. He then named the people involved in this long process under the leadership of the Montana Consensus Council: Page Dringman, attorney representing the potentially liable person caucus; Anne Hedges, MEIC, representing public interest group; Cindy Brooks and Carol Fox representing DEQ; Peter Nielsen representing local government caucus; Steve Brown, Attorney representative of the potentially liable party caucus.

**SEN. GROSFIELD** commented on the statement of intent of the bill, which was to provide an option to the concept of joint and several liability for potentially liable persons to have their proportionate share of liability determined. He explained that in that past, "if you had a deep pocket, lookout," even if the party only for example contributed 10 percent to the problem, you might be paying more of the share, even most of the entire cost if your pocket was deep enough. It was felt by the last legislative session that it was not the best or fairest way to do it, and the Dept. that was directed to look for an option. SB 377 is that option.

Proponents' Testimony:

**Denise Mills, Administrator, Remediation Division, Dept. of Environmental Quality,** provided a copy of her testimony and a briefing paper on the bill to the committee.
**(EXHIBIT 3)**. DEQ supported SB 377 because it provided: A fair alternative to strict, joint, and several liability; Assurances that remedial actions will be accomplished in a reasonable time frame; A process for settlement of costs between multiple PLPs, including potential orphan shares without litigation or court actions.

*{Tape: 1; Side: B; Approx. Time Count: 4:10; Comments: .}*

**Page Dringman, Potentially Liable Party Caucus,** which included railroads, timber, mining, petroleum, landfills, any such entity that could be potentially liable under the state environmental laws. She handed out **(EXHIBIT 4)** that briefly outlined the whole bill. This bill offered an alternative scheme to joint and several liability. She said it allowed for liable parties to opt into an allocation scheme that allocated liability on more of a fault base system. She pointed out that no one is mandated to enter into the allocation scheme, this is entirely voluntary. However, there is a big incentive to enter into the allocation scheme because if they don't, **Ms. Dringman** says they remain subject to strict joint and several liability under the current law.

The criteria for eligibility was that your site:

1) Was on the state CECRA list. The present list contains 180 sites.
2) Can not be on Federal Superfund list nor national priority list (NPL).
3) Can not use the allocation scheme for natural resource damages, particular for remediation costs.
4) Can not collect past costs, but is limited to costs incurred after the date of the petition.

**Ms. Dringman** explained the controlled apportionment option and the time frame involved along with other major provisions and funding. See **(Exhibit 4).**
She went further into breaking down funding sources -
* the metal mines tax of 8.5 per cent, currently going into the special abandoned mine account that expires in 1997.
* $200,000/year from the tax proceeds, not a guaranteed source.
* $200,000/year from the interest generated from the RIT starting in the next biennium.
* Potentially penalty and fine money collected in environmental areas.
* Penalties during process and settlement monies would go back into the program.
* Federal funding may be available on a site by site basis.
* Possible Dept. of Natural Resources grant money and other program.

**Ms Dringman** reiterated that the orphan fund is a reimbursement fund. They tried to limit the state's potential liability in that it is a reimbursement mechanism.
A party can't receive money from the fund until the cleanup is done. A party can't receive any costs except remediation costs. A party can't collect interest on your costs, and if there is no money in the fund, then the party waits.
There is no obligation of the state, therefore, to pay money out if there is no money available in this fund. Quantifiable money amounts to about $1.4 million a biennium, which is a good starting point, she stated, however long term money is needed. She urged the committee to pass the bill.

**Anne Hedges, Montana Environmental Information Center, (MEIC), Representative of the Public and Environmental Interest Caucus,** said that this was a long arduous process, and she initially did not believe they would ever reach an agreement. She stated that this bill is a good start, although not perfect. She listed the people she worked with on this caucus and represented: Jeff Smith, Ester Nelson, Mark Johnson, Robin Billau, John Ray. Other groups that looked at this document and signed off included Montana Audubon, Greater Yellowstone Coalition, and the Montana Public Interest Research Group. She said the groups and people stated above did all feel this bill is a good step in the right direction.

**Ms. Hedges** stated the parameters that had to be met were environmental and public interest safeguards. She spoke of the

environmental safeguards and departmental safeguards that were included in this bill.
*The fact that natural resource damage liability is not covered.
*Reimbursement from the orphan share fund is very conservative.
*Previous costs incurred by the PLP before the date of this act is effective are not eligible for reimbursement.
*If insufficient money is in the account, reimbursement is not required and the orphan share fund, the department, and the state are not liable for making any reimbursements for the costs.
*Interest cannot accrue on outstanding claims.
*Only actual documented remedial action costs may be reimbursed.
*Attorney fees, legal costs, and operation and maintenance costs cannot be reimbursed.
*There is only one allocation allowed per facility.
*Site has to be on priority list.

She stated that one of the most important points was that somebody would always be in these proceedings defending the orphan fund ensuring that all the parties that entered into these proceedings don't try to dump off their share of responsibility on this orphan share to get reimbursed from the state.
The department will be required to represent the orphan share. Our concern was this might overburden the department. The department will not be required to be in more that five allocations at one time. The public will be allowed to comment and innocent parties will be protected.

**Ms Hedges** stated that the allocation factors that are on page 43 in the document help guarantee that the irresponsible party will be held responsible.
The remedial action has to be completed before the party can seek reimbursement from the orphan fund.
The PLP has to begin cleanup while the allocation is moving forward or cleanup has to be concurrent with the allocation process.
The department has listed the sites by priority- low, medium, high, maximum. At high and maximum priority sites, if the responsible party does not comply with the requirements of cleanup, the dept. must take action.

The Caucus felt that with these provisions in the bill, there were enough safeguards regarding public interests and environmental protection. The people participating in this caucus were willing to support this bill and hoped the committee did also.
She handed out a letter of testimony from **Robin Billau**, a member on the Public and Environmental Interest Caucus. **(EXHIBIT 5)**

**Peter Nielsen, Acting Director of Environmental Health, Missoula City-County Health Dept., Local Government Caucus.** Other caucus members included: Gordon Morris, John Sesso, ReBecca Dupuis, Barry O'Connell, Ron Hanson, Alec Hansen, Cheryl Beatty, and Vivian Drake. **Mr. Nielsen** read his written testimony which are attached to these minutes as **(EXHIBIT 6)**. He stated that the

Local Government Caucus supported this bill and its proposed funding mechanisms, but recognized that the funding will not be sufficient. The caucus does not support anticipated proposals to divert RIT funds to the orphan share fund. In closing, he wanted to acknowledge Carol Fox, DEQ Superfund Program, and Cindy Brooks, an attorney for DEQ and emphasize that without these people's participation, this consensus process would not have resulted in the present outcome. He thanked those individuals for their hard work and dedication.

**Steve Brown, Attorney, Missoula**, stated that he was also a member of the PLP Caucus, which represented all the businesses and individuals in Mt. who could potentially get caught up in the liability scheme. He focused his testimony on the protection of small parties that may have contributed a very small portion to the site. The existing CECRA statute had provisions to protect small parties, he stated, but they are fairly vague, and modeled from federal law, and they do not work very well. The Caucus developed some more specific standards concerning small parties and put them into two categories: demicromis and deminimis. See **(EXHIBIT 7)**. He felt these provisions protected the small businesses and individuals who may be swept into the liability scheme and said the caucus supported the bill.

**Ester Nelson, Nelson's Mobile Home Park, Bozeman,** was a member of the Citizen's Caucus for the Governor's Consensus Council Study on Joint and Several Liability in CECRA. She read her written testimony which is attached to the minutes as **(EXHIBIT 8)**. She added one recommendation concerning citizen recovery of damages, but felt SB 377 guaranteed the safeguards for public health and the environment.

**Don Allen, Mt. Wood Products Association** stated he did participate as an alternate on the caucus that **Steve Brown** referred to and stood in support of SB 377.

**Ward Shanahan, ARCO,** supported the bill.

**Lisa Hollenbeck, Attorney with Poore, Roth, and Robinson, Butte,** said a partner in her law firm, **John Davis,** was an alternate member of the Industry Caucus, and the law firm was in support of this bill.

Opponents: None

Questions from Committee Members and Responses:

**SEN. BEA MCCARTHY,** asked **Anne Hedges** about the amendment that **Ester Nelson** requested about citizen recovery and the rationale of changing that.

**Anne Hedges** responded this was a result of some confusion on her part and it wasn't put in the final draft because of an error in the final discussion. She said she would have to contact all the

other participants in order to remove that section. It was something the caucus discussed and agreed to previously.

**SEN. MCCARTHY** then asked if she could talk to the other members before it is heard in the House to find out if an amendment is necessary.

**SEN. DALE MAHLUM** asked if this bill in any way will harass small businesses? She answered no, it would not.
He asked if the county health department would be the entity to initiate the action against a small business? **Ms. Hedges** said she doubted it, but suggested to ask **Mr. Nielsen.**

**Peter Nielsen, Missoula County Health Dept.,** said no.

**SEN. VIVIAN BROOKE,** asked **Page Dringman** about the allocator, is it somebody everyone agreed to, and who pays for this? She said yes, that is the first step. If everyone can agree on an allocator, then that is who they choose. If an agreement cannot be reached, then the District Court is asked to appoint an allocator. She explained that the PLP pays the first $5000.00 and when the allocation is done then they will figure out, based on liability, the allocator's share.
**SEN. BROOKE** asked how much it would cost per biennium. **Ms. Dringman** replied there was a lot of disagreement on the costs but $1.4 million per biennium would not reimburse all the orphan shares on the CECRA list. That is why this is considered short term funding but in the long term there is more funds needed. She said the short term funding got the ball rolling.

*{Tape: 2; Side: A; Approx. Time Count: 4:50 ; Comments: .}*

**SEN. BROOKE** asked about the continuation of clean-up at the sites if there is a disagreement.
**Ms. Dringman** said the clean-up does continue and one can't seek money until the clean-up is done. There is an exception for hardship cases, she said, if you had a site that was all small businesses and they did not have the financial capabilities to clean up, they could apply to the fund for money to go ahead and do that clean-up.

**SEN. BROOKE** asked, what if there is no money?
**Ms. Dringman** said they would have to wait until there was money, and stand in line, or whoever paid for it would be out of pocket, which is no different than the current law, she said.

**SEN. BROOKE** asked about the eligibility of the sites and are the sites that involve voluntary clean-up eligible?
**Ms. Dringman** replied that they are eligible and wanted to ensure that people proceeding on a voluntary basis would also be able to seek reimbursement.

**SEN. BROOKE** asked **Anne Hedges** about who monitors the clean-up?

**Ms. Hedges** said the Dept. of Environmental Quality.

**SEN. BROOKE** asked about if there were past discussions concerning the available FTEs to monitor this clean-up process?
**Ms. Hedges** said there were discussions but no comments on the lack of FTEs, but the best she could say was possibly because of the limit to five allocations at any one time.

**SEN. BROOKE** asked **Ms. Hedges** about the pilot project that was inserted at the end of the last legislative session, where $3 million dollars was appropriated for clean-up, was that used during the interim? **Ms. Hedges** said that it was $900,000, not $3 million and that the first three sites that applied for that money were eligible to receive $300,000.00 each for abandoned mine sites. One site was completed and was going through the process of reimbursement.

**VICE CHAIRMAN CRISMORE** asked **SEN. GROSFIELD** to close.

**SEN. GROSFIELD** said it was a long complex bill and there was a complimentary House Bill, HB 584, that had the actual appropriations in it. He added that there are some technical amendments as the Dept. talked about, and these need to be made to both bills.
He stated that the only sites that were talked about are sites that are on the list, and belong on that list.
As far as the funding discussion, he said, this program just started and as for this biennium, the $1.4 million would be adequate for this program. He said everybody was involved, various interests represented, including both large and small businesses.
Earmarking of fines and penalties was a slight concern he had with the bill, but he did not feel it would be an unsurmountable problem. He hoped the committee would pass the bill.

**VICE CHAIRMAN CRISMORE** closed the hearing on SB377. **SEN. GROSFIELD** resumed chair.

*{Tape: 2; Side: A; Approx. Time Count: 5:00; Comments: Committee recessed for a 10 minute break.*

## EXECUTIVE ACTION ON SB377

Amendments: sb0377.01 alm

Motion/Vote: **SEN. CRISMORE MOVED TO ADOPT THE AMENDMENT AS CONTAINED IN EXHIBIT 9. MOTION CARRIED.**

Discussion: **CHAIRMAN GROSFIELD** pointed out on line 5, page 34, that it was the intention to not have that language in the bill.

Motion/Vote: **CHAIRMAN GROSFIELD SUGGESTED TO STRIKE THE WORDS," WITH SECT 26-36." SEN. COLE MOVED THE AMENDMENT, MOTION CARRIED.**

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2/21/97
BILL NO. SB 377

**Testimony in Support of SB 377**
**Before the Senate Natural Resources Committee**

**by the Department of Environmental Quality**

February 21, 1997

For the record, my name is Denise Mills and I am the Remediation Division Administrator at the Department of Environmental Quality.

## Study on Joint and Several Liability–Purpose and Intent

Under the existing system of strict, joint, and several liability contained in the Comprehensive Environmental Cleanup and Responsibility Act, or CECRA, a party can be held liable without regard to fault if the party falls within a statutorily-defined category. Joint and several liability provides that any liable person can be held responsible for all remedial action costs at a facility.

Senate Bill 382, passed in the 1995 legislature, required the Department of Environmental Quality to study the joint and several liability provisions in CECRA, which is the state superfund law. Specifically, the 1995 legislation required the department to:

> "Institute a collaborative process involving all affected and interested parties that specifically analyzes the elimination of joint and several liability with respect to cleanup of state CECRA sites and any related funding necessary to clean up state CECRA sites as a result of eliminating joint and several liability. DEQ shall submit a report and legislative proposals that collaboratively resulted from that process to the 55th legislature."

Pursuant to this legislation, the department contracted with the Montana Consensus Council to develop a collaborative study on joint and several liability. The purpose of the study was to analyze the strengths and weaknesses of joint and several liability with respect to CECRA sites in Montana, and alternative liability schemes and sources of funding to clean up state superfund sites.

## Study Process

Based on interviews with interested and affected parties, the Consensus Council established a study committee consisting of four caucuses:

- Environmental and public interest groups
- Industry and business
- State and federal governments
- Local governments

Tribal governments declined the opportunity to participate. The state and federal government caucus included the Department of Environmental Quality, departments with RIT-funded programs (e.g., the Department of Natural Resources and Conservation), the Office of the Attorney General, the U.S. Environmental Protection Agency, the U.S. Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the Department of Housing and Urban Development, and the U.S. Army Corps of Engineers.

A study committee, consisting of four to five members of each caucus, met four times between October 1995 and February 1996 to discuss and evaluate strict, joint, and several liability and other liability structures used by other states and by the U.S. Environmental Protection Agency.

From February to December 1996, a coordinating committee of one to two representatives from each caucus met frequently to discuss alternative liability schemes that would be fairer than joint and several liability. In December 1996 the coordinating committee finished the working documents on the controlled allocation of liability option and funding options for orphan shares. These documents, prepared in the collaborative process, form the basis for the consensus legislation provided in SB377.

## Alternative to Joint and Several Liability

Although the 54th legislature required the DEQ to analyze elimination of joint and several liability and the associated costs, the study committee developed the liability apportionment option as a complement to joint and several liability. The committee determined that joint and several liability should be retained as a default option for DEQ enforcement under CECRA, if necessary. If PLPs choose the controlled allocation of liability provided in SB377 and they follow the procedures and requirements for controlled allocation process, they may be exempt from strict, joint, and several liability.

The controlled allocation of liability process will result in an orphan share of cleanup costs for many facilities. As defined in SB377, orphan share costs are those attributed to defunct or bankrupt liable persons who are not affiliated with any viable person. Any orphan share costs, therefore, will be borne by the state of Montana.

## Management and Payment of Orphan Shares

Under the current joint and several liability system the state incurs orphan share costs for remedial actions at some facilities; however, private entities bear the majority of those costs, usually 100 percent regardless of fault or contribution. The controlled allocation of liability option will increase the state's responsibility for covering orphan shares because it redistributes financial responsibility for site remediation among the state and private entities.

As an example, with the current system of joint and several liability, the department's projections of orphan share costs for 39 CECRA sites for which costs could be estimated range from $8 million to $20. The department's projections for orphan share costs for these same 39 sites under a controlled allocation of liability option are projected to increase to a range of $42 million to $48 million. These estimates and the projected expenditure time frames are provided in the fiscal note for SB377.

If this legislation passes, the DEQ will manage the orphan share state special revenue account created in this bill. The orphan share account will be used exclusively to reimburse the orphan's share of remedial action costs for a facility and to represent the orphan's share during the liability allocation process, as provided in the bill.

## Statement of Support for the Bill

The DEQ supports SB377 because it provides:

- A fair alternative to strict, joint, and several liability that encourages cleanup of CECRA sites without one party bearing the entire cleanup costs if multiple PLPs and an orphan share have been identified.

- Assurances that remedial actions will be accomplished in a reasonable time frame, rather than slowing down or stopping during liability allocation.

- A process for settlement of costs between multiple PLPs, including potential orphan shares, without litigation or court actions.

DEPARTMENT OF ENVIRONMENTAL QUALITY

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 b
DATE 2/21/97
BILL NO. SB 377

MARC RACICOT, GOVERNOR

STATE OF MONTANA

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# Briefing Paper on SB377
# Prepared by the Department of Environmental Quality

Senate Bill 377 provides an alternative to joint and several liability for potentially liable persons (PLPs) to determine their proportionate share of liability for remedial actions at a state superfund facility through an expedited and controlled process contemporaneous with remedial actions at the subject facility.

## 1.0 Background and Purpose

Under the existing system of strict, joint, and several liability, a party can be held liable without regard to fault if the party falls within a statutorily-defined category. Joint and several liability provides that any liable person can be held responsible for all remedial action costs at a facility. The controlled allocation process will result in an orphan share[1] of cleanup costs for many facilities, which will be borne by the state of Montana. If PLPs follow the procedures and requirements for the controlled allocation of liability option, they may be exempt from strict, joint, and several liability.

Senate Bill 382, passed in the 1995 legislature, required the Department of Environmental Quality (DEQ) to study the liability provisions in the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) (the state superfund law) with oversight from the Environmental Quality Council. Specifically, this legislation required the DEQ to:

> "Institute a collaborative process involving all affected and interested parties that specifically analyzes the elimination of joint and several liability with respect to cleanup of state CECRA sites and any related funding necessary to clean up state CECRA sites as a result of eliminating joint and several liability. DEQ shall submit a report and legislative proposals that collaboratively resulted from that process to the 55th legislature."

The DEQ contracted with the Montana Consensus Council to develop the collaborative study. Based on interviews with interested and affected parties, the Consensus Council established a study committee consisting of four stakeholder groups: public and environmental interest groups; industry

[1] Orphan share costs are those attributed to defunct or bankrupt liable persons who are not affiliated with any viable person.

and business; state and federal governments; and local governments. Tribal governments declined the opportunity to participate.

These stakeholders met once a month from November 1995 to February 1996. Between February and December 1996 representatives of each stakeholder group (the study committee) met frequently to discuss liability and funding alternatives for orphan share remedial action costs. In November and December 1996 these representatives collectively finalized working documents that describe the controlled allocation of liability alternative and short- and long-term funding options for orphan share remedial action costs at CECRA sites.

Although the 54th legislature required the DEQ to analyze elimination of joint and several liability and the associated costs, the study committee developed the liability apportionment option as a complement to joint and several liability. The committee determined that joint and several liability should be retained as a default option for DEQ enforcement under CECRA, if necessary.

The working documents on liability apportionment and orphan share funding form the basis for this consensus legislation, which is presented collaboratively to the legislature by the four stakeholder groups who participated in the study, including the DEQ. Although each caucus made many concessions during the study to see this bill come to fruition by the 55th legislative session, they agree that this is good legislation for several reasons. SB377 provides:

- A fair alternative to strict, joint, and several liability that encourages cleanup of CECRA sites without one party bearing the entire cleanup costs if multiple PLPs and an orphan share have been identified.

- A requirement for a lead PLP who will proceed with remediation at a facility while negotiating liability apportionment with the other PLPs and with the state in defense of the orphan share.

- A process for settlement of costs between multiple PLPs without litigation or court actions.

- Assurances that remedial actions will be accomplished in a reasonable time frame, rather than slowing down or stopping during the liability allocation proceedings.

- A framework and authority for rulemaking to establish clear procedures that the DEQ must follow for listing and delisting CECRA sites.

## 2.0 Controlled Allocation of Liability

The liability allocation process has been designed to last approximately 12 months without extensions or appeals, depending on how long discovery takes and whether an allocator is necessary to assist with the proceedings or if the participants negotiate a settlement on liability apportionment without involving an allocator. A time line showing the steps involved and the time line for this process is attached and key elements are discussed below.

### 2.1 Eligibility

Eligibility criteria for the controlled allocation option (new section 28) are as follows:

- Any site on the CECRA priority list is eligible.
- Remedial action costs incurred before the date of petition are ineligible.
- A PLP may only petition once per facility to participate in the controlled allocation process, unless (1) new information becomes available or (2) the facility has distinct units or parcels that will be cleaned up in different phases, and (3) there is no orphan share.
- Only remedial action costs can be allocated and are eligible for reimbursement from the orphan share account; attorney fees, legal costs, and remedy operation and maintenance costs cannot be allocated or reimbursed.
- Current or future National Priorities List (NPL) sites (i.e., federal superfund sites) and natural resource damages are ineligible.

### 2.2 Process Initiation

A written petition to the DEQ is required to begin the liability allocation process under this act (new section 29). The allocation process can be initiated and can proceed upon written petition of one or more PLPs. Petitions will be addressed in the order received. Petitions can be submitted for the following facilities with the noted provisions:

- A facility where the DEQ issued a notice letter before the effective date of this legislation. If remedial actions began before passage of this legislation, only remedial actions costs incurred from the date of the petition are eligible for liability apportionment.
- A facility where the DEQ has not issued a notice letter, but a voluntary cleanup plan has been approved. Only remedial action costs incurred after the date of petition are eligible for

liability apportionment.

- A facility where the DEQ issues a notice letter after the effective date of this legislation. Sixty days from the date of the notice letter, the noticed PLP may petition the DEQ for liability allocation, and may name other PLPs who were not noticed and provide information that shows that the nominated entity is potentially liable.

If there is a potential orphan share at a facility where liability will be allocated, the DEQ will represent the orphan share during the allocation. To manage the DEQ's workload and effectively defend an orphan share, allocation is only allowed on five facilities at a time. Other petitions may be stayed before the discovery stage (described below) and processed in the order received after a settlement has been reached and liability apportioned on one or more of previous five petitions. A petition will not be stayed if the PLPs participating in the allocation process agree in writing that there is no orphan share and that the state is not potentially liable.

## 2.3 Designation of a Lead PLP

A designated lead PLP will implement the remedial actions required by the DEQ. The lead PLP will be designated by the noticed persons for each facility within 30 days of the date of a notice letter, unless the PLPs inform the DEQ that a 30-day extension is needed. An extension may be granted if good cause is shown. If a lead PLP has not been identified within these time frames, the DEQ will designate a lead.

The lead PLP is responsible for carrying out the remedial actions required by the DEQ and must comply with the terms of the notice letter, order, stipulated agreement, or approved remedial action plan to remain eligible for the apportioned liability option. If the lead PLP fails to comply, the DEQ will take enforcement actions available under CECRA to compel compliance at maximum- and high-priority sites. For medium- to low-priority sites, the DEQ may enforce compliance, but such action is not required for these sites.

## 2.4 Allocation of Liability

The allocation process begins with discovery. Discovery is restricted to a maximum of 90 to 120 days for each PLP (including the state if there is an orphan share). As noted above, the DEQ will only participate in five allocation proceedings at one time and will stay additional petitions opting for this process at the discovery stage until one or more of the first five allocation proceedings have been completed.

Before proceeding with a formal allocation process with an allocator, the parties are expected to conduct good faith settlement negotiations to apportion liability among themselves. If they cannot

agree on liability apportionment within 30 days after discovery closes, they must select an allocator. SB377 identifies several requirements for selection of an allocator, including disclosure of potential conflicts of interest and all participating persons must agree on the allocator. If the parties are unable to agree on an allocator within 30 days, an allocator will be appointed by a district court in the county where contaminated site is located or where any PLP resides or has a principal place of business or by the first judicial district.

The PLPs participating in the allocation process are required to submit to the allocator and to each other a position statement and exhibits to identify the factors that the PLP believes are relevant to allocation of liability for the facility. The allocator can collect additional information through interviews with the PLPs or their representatives, and by request to the DEQ. Each participating and nonparticipating PLP's share of liability is to be allocated based on information presented or collected during the allocation process and, considering facility characteristics, apportion liability on a percentage basis according to 12 fault-oriented factors [new section 34, (5)(a) through (5)(l) of SB377].

Within 60 days of selection or appointment, the allocator will submit to the DEQ and all noticed or nominated PLPs a report that documents each PLP's share of liability and the rationale thereof. Within 30 days of the date of that report, the PLPs are to prepare and sign a stipulated agreement covering the proportionate share of liability for each PLP, how remedial actions will be conducted, provisions for reimbursement from the orphan share account, contribution protection, and covenants not to sue.

A PLP who did not participate in the allocation proceeding but was assigned a portion of liability for remedial actions at a facility may sign the stipulated agreement. Any liable person who signs the stipulated agreement and fails to comply with the terms of that agreement is required to pay, in addition to that person's share of remedial action costs, a penalty of 2 times the amount of that person's proportionate share of liability.

An allocator's decision may be appealed to a district court; however, the decision must be upheld unless the PLP who is filing the appeal can demonstrate that the decision was made upon unlawful procedure, affected by other error in the law, clearly erroneous in light of the evidence on the record, or arbitrary and capricious.

## 2.5 Default to Strict, Joint, and Several Liability

The following actions may cause a PLP to remain subject to the existing system of strict, joint, and several liability (75-10-715, MCA).

- A PLP discontinues participation in the liability allocation after initiating the process.
- A lead PLP fails to comply with the requirements of a notice letter, order, stipulated agreement, or other approved remedial action plan, unless the lead PLP can establish that the noncompliance is due to good cause or another PLP assumes the lead role.
- A PLP is unresponsive to a discovery request or does not participate in an allocation proceeding and is allocated a share of liability.
- Failure to execute or sign a stipulated agreement.

## 3.0 Creation of an Orphan Share Account

If this legislation passes, the DEQ will manage the orphan share state special revenue account established in this bill (new section 24). (Appropriation to the orphan share state special revenue account is provided in LC 1134.) The orphan share account will be used exclusively to reimburse the orphan's share of remedial action costs for a contaminated site and to defend the orphan share in concert with the PLPs involved during the liability allocation process.

Remedy construction and removal actions must be completed before a claim can be reimbursed, except for hardship cases. If a PLP demonstrates it is unable to complete remedial actions at a facility because of financial hardship, a claim can be submitted for partial cleanup and may be reimbursed to help finance and facilitate timely completion of cleanup at that facility. To receive early reimbursement, a PLP must be in substantial compliance with all remedial action plans approved by the DEQ.

Reimbursement of orphan share costs is dependent upon the orphan share account balance. The orphan share costs will be reimbursed in the order of claims received by the DEQ. The state is not required to reimburse orphan share costs if the account balance is insufficient and no interest will accrue on unpaid claims.

If the orphan share account balance is sufficient, the DEQ will pay orphan share defense costs from the account; however, if the balance is insufficient, the PLPs will pay the orphan share defense costs in proportion to each PLP's share of liability. The PLPs may be reimbursed for payment of orphan share defense costs if the necessary funds become available.

## 4.0 State Liens

If an orphan share has been reimbursed by the state, an owner cannot profit from the state's payment for cleanup of a contaminated property. SB377 includes a provision for the DEQ to file a lien when

state funds are used to cover the orphan share costs and the fair market value of the property has increased as a result of the cleanup. The lien will be the lesser of either the increase in value or the amount of funds actually expended by the state. Any lien payment would be deposited into the orphan share account (or the environmental quality protection fund if state funds were drawn on that account).

## 5.0 Sunset Provision

The controlled allocation of liability alternative terminates on June 30, 2005. The combined effect of requiring cleanup while liability is being allocated and the 8-year life of this legislation will be an incentive for PLPs to cleanup of tens of CECRA sites because of the new opportunity to share the costs with other PLPs, including the orphan share. These incentives are not provided under the current strict, joint, and several liability system which often requires a PLP to pay for more than its share of the remedial action costs and then file a contribution action against other PLPs to receive reimbursement.

## 6.0 Other Revisions to CECRA

SB377 includes other clarifications and amendments to CECRA that complement the controlled allocation of liability process by clarifying the law and making it more effective. These revisions are described below.

### 6.1 Listing and Delisting Rulemaking

Section 17 (page 19 of SB377) authorizes the DEQ to adopt rules under CECRA, particularly for listing, delisting, and prioritizing sites on the CECRA list. This legislation specifies the requirements and provisions for listing/delisting rules, including a requirement for the DEQ to involve and address comments from business and industry and the public on proposed listing and delisting of sites.

Until now the DEQ has relied on a policy to determine whether a facility should be included on the CECRA list; however, there has been limited public involvement in the decision process. The amendments on the department's rulemaking authority and the newly promulgated rules for listing and delisting rulemaking will be an improvement over past practices.

### 6.2 Defenses and Exclusions to Liability

Section 19 of SB377 clarifies defenses to being held jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility. Specifically, the

legislation clarifies that transporters of household waste may have a defense unless that person knew or should have known that the hazardous or deleterious substance was in the refuse.

Section 19 also adds exclusions from liability, which are not currently in CECRA. Exclusions have been added for: (1) generators or disposers of household waste; (2) owners or operators (residences or businesses) above a groundwater contaminant plume emanating from another facility; (3) residential property owners of 20 acres or less. Exclusions are not applicable to (1) persons who would otherwise be liable under CECRA; (2) an owner or operator who does not cooperate with the DEQ and PLP during remedial actions; or (3) contamination was visible at the time when residential property was purchased. A person will be liable if the DEQ provides substantial credible evidence that the person fails to satisfy any exclusion provision contained int the legislation.

### 6.3 Deminimis and Demicromis Settlements

At any time during allocation of liability by an allocator, the DEQ may enter into settlement agreements with a PLP who meets certain criteria (Section 20). The settlement provisions contained in SB377 are designed for facilities with multiple generators or transporters. Deminimis and demicromis settlements will not increase the amount of the orphan share.

The DEQ may enter into a demicromis settlement with a person if substantial credible evidence is presented that shows the person contributed less than 0.002 percent of the total volume or 110 gallons or 200 pounds of materials containing hazardous or deleterious substances, whichever is greater, at a facility that received hazardous or deleterious substances from multiple contributors.

The DEQ may enter into a deminimis settlement with a person if substantial credible evidence is presented that shows the person contributed less than 5 percent of the total volume of waste disposed of or treated at a facility that received hazardous or deleterious substances from multiple contributors. A person who satisfies the criteria for a particular defense could also be eligible for a deminimis settlement.

For both deminimis and demicromis settlements, the DEQ will consider the toxicity of the substance contributed by the person when negotiating the settlement.

Any person involved in a deminimis settlement may be required to pay costs and penalties as follows:

- With a reopener clause, the DEQ may require cash compensation for a deminimis settlement provided the compensation does not exceed 2 times the DEQ's reasonable projection of that person's liability at a facility.

- If the parties settling do not want a reopener clause, the settlement may include a premium such as 4 times the projected amount of the person's liability.

Any funds received as a result of a deminimis or demicromis settlement for a particular facility will be paid in the following order of priority:

- To the DEQ as reimbursement for remedial action costs.

- To PLPs as reimbursement for remedial action costs. If liability is allocated for the subject facility, the reimbursement must be in proportion to each PLPs share of liability as determined by the allocator,

- To the orphan share account if liability for remedial action has been allocated.

- To the environmental quality protection fund if liability for remedial actions has not been allocated.

## 7.0 Extension of the Mixed-Funding Pilot Program

SB377 includes an extension of the mixed-funding pilot program, which was amended into SB382 near the end of the 54th legislative session. In the 55th legislature, HB3 includes a supplemental appropriation of $900,000 for the DEQ to reimburse PLPs who participated in the mixed-funding pilot program. Under the statute, a PLP can be reimbursed for remedial action costs of up to $300,000 for one of three high-priority abandoned mine sites in Montana and the remedial actions must be completed before reimbursement can be made. The revenues are held in the abandoned mine state special revenue account that was created by SB382 to fund the mixed-funding pilot program.

One PLP has completed remedial actions at a site in Helena, Joslyn Street Tailings, and has negotiated with the DEQ for reimbursement of a portion of its remediation costs. If HB3 passes, this PLP will receive $300,000 from the abandoned mine state special revenue account as reimbursement for part of the cleanup costs at Joslyn Street Tailings.

Two additional PLPs have expressed interest in the program for remedial actions at Corbin Flats (in Jefferson County) and the Block P Mill (near Hughesville), but cleanup plans for these sites have not been completed or approved by the DEQ. By current statute, the mixed-funding pilot program

will expire on June 30, 1997. To allow these PLPs to benefit from the mixed-funding pilot program, SB377 extends the date for reimbursement (for Corbin Flats and Block P Mill only) to June 30, 1999, provided the DEQ has approved a cleanup plan for each site by June 30, 1997. If these deadlines are not met and if SB377 passes, the unencumbered balance of the abandoned mine state special revenue account would be deposited into the orphan share account.

EXHIBIT NO. 4
DATE 2/21/97
BILL NO. SB 377

# SAFEGUARDS

- STRICT, SEVERAL, AND JOINT AS DEFAULT

- EMERGENCY ACTION PROVISIONS

- COMPLIANCE REQUIRED

- CLEANUP OCCURS SIMULTANEOUSLY WITH APPORTIONMENT

- CLEANUP OCCURS REGARDLESS OF ORPHAN SHARE FUNDS

# ELIGIBILITY

- CECRA PRIORITIES LIST SITES

- 3 TRIGGERS
  1) past notice letter sites
  2) future notice letter sites
  3) voluntary cleanup sites

- NO FEDERAL SUPERFUND SITES

- NO NATURAL RESOURCE DAMAGES

- NO PAST COST

## CONTROLLED APPORTIONMENT OPTION

| | | |
|---|---|---|
| STEP 1 | Notice letters issued | |
| STEP 2 | 30 days | Lead PLP designated |
| | 30 days | Other parties nominated |
| | 30 days | Additional PLPs noticed |
| | (30 day extension) | |
| STEP 3 | 90 days | Discovery conducted |
| | (30 day extension) | |
| STEP 4 | 30 days | Pre-Allocation negotiation conducted |
| STEP 5 | 30 days | Allocator selected |
| STEP 6 | 60 days | Allocation completed |
| | (30 day extension) | |
| STEP 7 | 30 days | Stipulated agreement completed or allocation appealed |

## OTHER MAJOR PROVISIONS

- SETTLEMENT OPPORTUNITY

- EXCLUSIONS

    1) household waste
    2) property overlying contaminated aquifers
    3) residential property owner

- LISTING/DE-LISTING PROCEDURE

- SUNSET PROVISION

- CITIZEN SUIT PROVISION

- DEQ'S ROLE IN DEFENDING ORPHAN SHARE

# FUNDING

- ORPHAN SHARE FUND

- SHORT TERM FUNDING
  1) metalliferous mine tax
  2) RIT tax revenue and/or interest
  3) DEQ fines/penalties

- PROJECT FUNDING
  1) reclamation and development grants
  2) federal funding

- RECOMMENDATIONS FOR LONG-TERM FUNDING
  1) RIT Study
  2) hazardous substance tax

EXHIBIT NO. 2
DATE 2/21/97
BILL NO. SB 377

Amendments to Senate Bill No. 377
1st Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Larry Mitchell
February 20, 1997

1. Page 3, line 17.
Strike: "1999"
Insert: "1997 -- sec. 27, Ch. 584, L. 1995"

2. Page 3, line 18.
Strike: "1999"
Insert: "1997"

3. Page 19, line 14.
Strike: "conducting"
Insert: "giving public notice and providing opportunity"

4. Page 19, line 19.
Following: "75-10-704,"
Strike: "and"

5. Page 39, line 20.
Following: "of"
Strike: "the county where"
Insert: "each county in which all or a portion of"

6. Page 41, line 26.
Strike: "cleanup plan"
Insert: "required remedial actions"

7. Page 44, line 10.
Strike: ":"

8. Page 44, line 11.
Strike: "(i)"

9. Page 44, line 13.
Strike: "(ii)"
Insert: "(g)"

10. Page 44, line 14.
Strike: "and"

11. Page 44, line 15.
Strike: "(iii)"
Insert: "(h)"

12. Page 44, line 17.

Strike: "(g)"
Insert: "(i)"
Renumber: subsequent subsections

13. Page 48, line 19.
Strike: "21"
Insert: "20"

14. Page 48, following line 19.
Insert: "(3) [Section 21] terminates June 30, 1997."

15. Page 48, line 29.
Strike: "creating and"

16. Page 49, line 2.
Strike: "contain the"
Insert: "deposit excess penalty collections in an"

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 2/21/97
BILL NO. SB377

To: House Natural Resource Committee
From: Robin Billau, Park County Environmental Council
(406) 587-2558
Subject: Support of SB 382

I am submitting my testimony to the Members of the House Natural Resource Committee in support of Senate Bill 382 as I was a member of the citizens group that worked to establish a list of concerns and resolutions as part of a consensus process. I would like to state that this was my first time participating in a formal consensus process where all factions were represented. I am highly impressed with the effort expended by all of the consensus members and in particular, Ms. Anne Hedges, MEIC, Ms. Carol Fox, DEQ and Ms. Cindy Brooks, DEQ. The resulting bill you are considering is a testament to the sincere and extensive time commitment given by the participants. It was a pleasure to be involved in my small way with such a professional and amazingly non partisan group and to see the successful outcome be something all that participated could agree upon.

Thank you for your consideration.

Robin Billau

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
MISSOULA VALLEY WATER QUALITY DISTRICT
301 W ALDER ST
MISSOULA, MONTANA 59802-4123

PHONE (406) 523-4890 FAX (406) 523-4781

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 2/21/97
BILL NO. SB 377

**Testimony on SB 377**
**Senate Natural Resources Committee -February 21, 1997**
**Peter Nielsen - Acting Environmental Health Director**
**Missoula City-County Health Department**

I have represented the Missoula City-County Health Department and the Local Government Caucus during the past year and one half in the Consensus Council's project regarding the state Superfund Program. On behalf of the Local Government Caucus and the Missoula City-County Health Department I am pleased to testify in support of SB 377.

The Local Government Caucus included the following representatives, besides myself:

- Gordon Morris, Montana Association of Counties
- Jon Sesso, Butte/Silver Bow Planning Office
- Rebecca Dupuis, Montana Environmental Health Association
- Barry O'Connell, City of Bozeman
- Ron Hanson, Powell County Planner

In addition, the following persons participated in the study and in caucus meetings:

- Alec Hansen, Montana League of Cities and Towns
- Albert Molignoni, Rocker Water and Sewer District
- Cheryl Beatty, Anaconda Deer Lodge County
- Vivian Drake, Lewis and Clark County Water Quality District

The Local Government Caucus was open to involvement of any local government interests in Montana, and many efforts were made to inform others of the process and to invite their participation.

As you know, our Department and other local governments testified in opposition to SB 382 in the 1995 Legislature. Our concerns included that the bill would have not provided sufficient funding for orphan shares, and that there was no requirement to commence or complete cleanup at sites that may have become part of the orphan share program. This would have resulted in many sites stagnating in our communities, resulting not only in potential health and environmental affects but also in serious economic impacts to local communities and local governments. Hazardous waste sites which are not cleaned up, or not effectively cleaned up, can result in financial impacts including lost residential and commercial real estate sales, lost economic development and redevelopment opportunities, diminished property tax collections and devalued real estate values in neighboring areas. Avoiding these potential impacts was paramount for the local government caucus in our participation in the consensus process that resulted in this bill.

The provisions of Section 30 of this bill were intended to address these concerns. This section provides for emergency remedial action at a site, regardless of its status in a controlled allocation proceeding. It also provides for designation of a lead responsible party, and requires that party to proceed with remedial actions including investigation and cleanup, concurrent with the allocation proceeding. And, importantly, it provides for Department enforcement to ensure that all remedial actions are taken while an allocation proceeding is conducted. These provisions will ensure that action is taken in a timely fashion at maximum and high priority sites, that our communities will not suffer potential health or environmental impacts and that local governments will not suffer adverse economic impacts from delayed cleanup action. The Local government caucus' support of this bill is very much contingent on the provisions contained in Section 30.

I'd like to clarify that the local government caucus supports the proposed funding sources for the orphan share fund, but that we are aware that these sources are not expected to provide sufficient funds to pay for the orphan shares at all sites that will be eligible in coming years. Our study documents indicate that as much as $11 million could be required in the next five years to pay for orphan shares at 18 sites. As much as $18 million could be required at an additional 8 sites in the next ten years. $19 million could be required for an additional 13 sites in the next ten years. This is based only on existing sites. We expect that additional sites may be designated in coming years, and that the existence of the orphan share fund may in effect create an additional demand for dollars in that fund to clean up additional sites. It appears that at least $2 million per year could be required for orphan shares at CECRA sites. However, the current funding mix is expected to provide much less than that amount. We are not confident that the proposed use of environmental penalties will result in the $300,000 per year projected by the study committee. We are also not confident that all other sources identified will result in the amount of income projected. Even if all of the sources of funding projected come through, it appears that the orphan share fund will have approximately one-half of the amount needed to pay for orphan shares at currently identified sites.

This, naturally, has raised a strong concern in the local government caucus that the creation of this program and the orphan share fund will result in strong pressure to tap other funding sources in future legislative sessions. We are in particular concerned with potential proposals to divert funds from the RIT Trust, which funds many very important projects for small communities in Montana. Projects funded through grant programs funded by the RIT Trust strongly benefit public health, safety and welfare and the environment. The Study committee for this project recognized this potential constraint of funding for beneficial projects, and recommend that the Legislature carefully consider the effects of eliminating such funding and consider alternative sources of funding if RIT funds are diverted into the orphan share fund.

The Local Government Caucus supports this bill and its proposed funding mechanisms, but recognizes that the funding will not be sufficient. We do not support anticipated proposals to divert RIT funds to the orphan share fund. Even without the orpan share funding aspect of the bill, the controlled approtionment process will be a significant step forward in improving the process for cleaning up major contaminant sites in Montana.

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2/21/97
BILL NO. SB 377

# SB 377
# De Micromis and De Minimis Provisions

## Existing Law

- DEQ may enter into a settlement if certain conditions are met:
  - Settlement only involves minor portion of costs at the facility
  - Amount of hazardous substances contributed and toxicity of the hazardous substances both are "minimal" compared to other hazardous substances at the facility, or
  - Person owns the site but did not participate in any way in creating the problem
- Standards are difficult to implement in practice and rarely are used to provide relief to minor parties

## Proposed Changes

- DEQ may exempt from liability certain truly small contributors who meet certain objective factors
- DEQ may enter into a settlement agreement with parties who contribute hazardous substances at a facility in amounts below a threshold quantity
  - Cash out with reopener
  - Cash out without reopener
- DEQ retains authority to refuse to settle when site-specific conditions make settlement unwarranted
- Settlement funds used for cleanup at the site
- Settlements do not increase the orphan share

## Reason for Changes

- Add objectivity to the settlement process
- Consistency with EPA policy at federal sites
- Simplify allocation proceedings

Nelson's Mobile Home Park
718 N. 17th Ave.
Bozeman, Montana 59715

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 2/21/97
BILL NO. SB 377

**TO:** Senate Natural Resources Committee

**RE:** Hearing SB 377 - 3:00 pm, February 21, 1997

**FR:** Esther Nelson, Bozeman
A member of the Citizen's Caucus for the Governor's Consensus Council Study on Joint and Several Liability in CECRA

Senator Lorents Grosfield, Chairman and members of the Committee -

I have had the opportunity to work on the Consensus Council study to develop an alternative to the 1995 SB 382 which was deficient in many aspects as they involved the State Superfund Program. Working with representatives of the private sector, local government, citizens of other interests and the department of environmental quality was a real education for a complex issue. As recently as this last December, the citizen's caucus had serious concerns about signing off on the proposals, however, persistence and dedication prevailed. A consensus was reached for the provision of funding for orphan shares and a process for timely clean-up of polluted sites in Montana.

My involvement in the study was unique in that I think I am the only person who is actually involved with a polluted site - the Bozeman Solvent Site in the Northwest Section of Bozeman which involves several hundred people and future development, as well as the threat that the pollution is spreading to the East Gallatin River. I know, firsthand, what pollution means.

I can support SB 377 with one recommendation. The citizen's caucus supported a section for citizen recovery of damages without going through lengthy and costly litigation. This was deleted in the final draft. SB 377 provides for reimbursement and other assistance for the PLP's, but, nothing for property owners who have incurred considerable damages ranging from $6500 to over $100,000.00. I urge you to amend SB 377 to include citizen recovery of damages.

SB 377 guarantees safeguards for public health and the environment. Please consider this bill seriously.

Respectfully submitted,

Esther Nelson

Esther Nelson, Owner/Operator
Nelson's Mobile Home Park
Ph 406-587-3566

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 2/21/97
BILL NO. SB 377

Amendments to Senate Bill No. 377
1st Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Larry Mitchell
February 20, 1997

1. Page 3, line 17.
Strike: "1999"
Insert: "1997 -- sec. 27, Ch. 584, L. 1995"

2. Page 3, line 18.
Strike: "1999"
Insert: "1997"

3. Page 19, line 14.
Strike: "conducting"
Insert: "giving public notice and providing opportunity for"

4. Page 19, line 19.
Following: "75-10-704,"
Strike: "and"

5. Page 34, line 5.
Strike: "with [sections 26 through 36]"

6. Page 39, line 20.
Following: "of"
Strike: "the county where"
Insert: "each county in which all or a portion of"

7. Page 41, line 26.
Strike: "cleanup plan"
Insert: "required remedial actions"

8. Page 44, line 10.
Strike: ":"

9. Page 44, line 11.
Strike: "(i)"

10. Page 44, line 13.
Strike: "(ii)"
Insert: "(g)"

11. Page 44, line 14.
Strike: "and"

12. Page 44, line 15.
Strike: "(iii)"
Insert: "(h)"

13. Page 44, line 17.
Strike: "(g)"
Insert: "(i)"
Renumber: subsequent subsections

14. Page 48, line 19.
Strike: "21"
Insert: "20"

15. Page 48, following line 19.
Insert: "(3) [Section 21] terminates June 30, 1997."

16. Page 48, line 29.
Strike: "creating and"

17. Page 49, line 2.
Strike: "contain the"
Insert: "deposit excess penalty collections in an"

18. Page 49, line 15.
Strike: "25"
Insert: "26"

# SENATE STANDING COMMITTEE REPORT


February 22, 1997

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill 377 (first reading copy -- white), respectfully report that Senate Bill 377 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 3, line 17.
Strike: "1999"
Insert: "1997 -- sec. 27, Ch. 584, L. 1995"

2. Page 3, line 18.
Strike: "1999"
Insert: "1997"

3. Page 19, line 14.
Strike: "conducting"
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Strike: ":"

Amd. Coord.
Sec. of Senate

421326SC.SRF

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Strike: "(i)"

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Insert: "(g)"

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Strike: "25"
Insert: "26"

-END-

MONTANA SENATE
1997 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE Feb 21, 1997

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| SEN. VIVIAN BROOKE | ✓ | | |
| SEN. MACK COLE | ✓ | | |
| SEN. TOM KEATING | ✓ | | |
| SEN. DALE MAHLUM | ✓ | | |
| SEN. BEA MC CARTHY | ✓ | | |
| SEN. KEN MILLER | ✓ | | |
| SEN. MIKE TAYLOR | ✓ | | |
| SEN. FRED VAN VALKENBURG | ✓ | | |
| SEN. BILL CRISMORE, VICE CHAIRMAN | ✓ | | |
| SEN. LORENTS GROSFIELD, CHAIRMAN | ✓ | | |
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DATE 2-21-97

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: SB346, 377, 350
SJ 11

# < ■ > PLEASE PRINT < ■ >

| Name | Representing | Bill No. | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| LORNA FRANK-KARN | MT. FARM BUREAU | SB380 | X | |
| Denise Mills - D | DEQ | SB377 | X | |
| [illegible] | Brennan Dolan Heil Law | SB 377 | X | |
| Ward Shanahan | ARCO | SB 377 | X | |
| LISA HALLENBECK | POORE ROTH & ROBINSON | SB377 | X | |
| Tara Mello | MONTPIRG | SB377 | X | |
| Jill Andrews | Mt. Mining Assoc | | | |
| Steve Brown | Garlington Lohn & Robinson PRP Caucus | SB377 | X | |
| Peter Funk | MT Trout Unlimited | SB 346 | | X |
| Tara Mello | MONTPIRG | SJ 11 | X | |
| David Pattloff | Mt Audubon | SJ 11 | X | |
| Roxanne Kohl | MT Audubon | SB377 | X | |
| Don Mackler | MT Coal Council | SJ 11 | | X |
| John Fitzpatrick | Pegasus Gold | SB377 | X | |

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2-21-97

SENATE COMMITTEE ON NR

BILLS BEING HEARD TODAY: _____

# < ■ > PLEASE PRINT < ■ >

| Name | Representing | Bill No. | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| Peter Nielsen | Missoula Health | 346 377 | X | |
| Ted Lange | NPRC | SJ11 | X | |
| Deborah Smith | MT Chapter Sierra Club | SJ 11 | X | |
| Steve Pilcher | WEVA | [redacted] | | |
| Michael Murphy | MWRA | SJ 11 | | X |
| LARRY BROWN | AG PRES ASSOC MOGA | SJ 11 | | X |
| Mary Westwood | Montana Sulphur | | X | [redacted] |
| Pat Judge | MEIC | SJ 11 | X | |
| Larry Brown | Ag Pres Assoc | SB380 | X | |
| Steve Pilcher | WEVA | SJ 11 | | X |
| FRANK CROWLEY | PRP OWNS | SB 377 | X | |
| Bud Clinch | DNRC | SB380 | | X |
| Don Allen | MT Wood Products Assn | SB 377 | X | |
| | | | | |

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON NATURAL RESOURCES

**Call to Order:** By Chairman Dick Knox, on March 10, 1997, at 3:00 p.m., in Room 437

### ROLL CALL

**Members Present:**

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

**Members Excused:** none

**Members Absent:** none

**Staff Present:** Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

**Committee Business Summary:**

| | | |
|---|---|---|
| Hearing(s) & Date(s) Posted: | | SB 377, SB 332 |
| Executive Action: | | SB 108 DO CONCUR AS AMENDED (18-0), SB 175 DO CONCUR AS AMENDED (18-0), SB 223 DO CONCUR AS AMENDED (18-0) |

**Rep. Knox** handed out information from Fritz Daly about the Berkeley Pitt marked as **Exhibit #1.**
*{Tape: 1; Side: a; Approx. Time Count: 1.7; Comments: Exhibit #1.}*

## HEARING ON SB 377

Opening Statement by Sponsor: Sen. Lorents Grosfield, SD #13
*{Tape: 1; Side: a; Approx. Time Count: 2.6; Comments: none.}*

Proponents' Testimony:
Denise Mills, Remediation Administrator, Department of Natural Resources and Conservation, submitted **Exhibit #2**
*{Tape: 1; Side: a; Approx. Time Count: 8.2; Comments: Exhibit #2.}*

Page Dringman, participated in the process as a potentially liable party caucus member, submitted **Exhibit #3**
*{Tape: 1; Side: a; Approx. Time Count: 14.5; Comments: Exhibit #3.}*

Anne Hedges, participated in the process for the Public Interest and Environmental Caucus
*{Tape: 1; Side: a; Approx. Time Count: 26.3; Comments: none.}*
*{Tape: 1; Side: a; Approx. Time Count: end; Comments: flipped tape at the end.}*

Peter Nielsen, Acting Environmental Director for the Missoula City Council Health Department submitted **Exhibit #4**
*{Tape: 1; Side: b; Approx. Time Count: 1.0; Comments: Exhibit #4.}*

John Davis, attorney, represented a member for industry caucus
*{Tape: 1; Side: b; Approx. Time Count: 1.3; Comments: none.}*

Angela Janacaro, MT Mining Association
*{Tape: 1; Side: b; Approx. Time Count: 4.0; Comments: none.}*

Steve Pilcher, Western Environmental Trade Association
*{Tape: 1; Side: b; Approx. Time Count: 4.5; Comments: none.}*

Opponents' Testimony: none

Questions From Committee Members and Responses:
*{Tape: 1; Side: b; Approx. Time Count: 5.5; Comments: none.}*

*{Tape: 1; Side: b; Approx. Time Count: end; Comments: flipped tape at the very end.}*

*{Tape: 2; Side: a; Approx. Time Count: 0.1; Comments: none.}*

Closing by Sponsor:
Sen. Grosfield closed and submitted **Exhibit #5**
*{Tape: 2; Side: a; Approx. Time Count: 3.0; Comments: Exhibit #5.}*

exhibit #2
SB377
3/10/97

**Testimony in Support of SB 377**
**Before the House Natural Resources Committee**

**by the Department of Environmental Quality**

March 10, 1997

For the record, my name is Denise Mills and I am the Remediation Division Administrator at the Department of Environmental Quality.

Before I begin, I am providing to each committee member copies of my full written testimony with a briefing paper on SB 377 attached to it. The briefing paper summarizes the history of SB 377, the controlled allocation of liability process, and other amendments to the state superfund law. I realize that this is a lot of information, but SB 377 is complex and the information I am providing to you today is meant to serve as an abridged explanation of the intent of the bill; how the liability apportionment process will work as an option to strict, joint, and several liability; the state's involvement in the allocation process; and funding for orphan shares of remedial action costs.

## Study on Joint and Several Liability–Purpose and Intent

Under the existing system of strict, joint, and several liability contained in the Comprehensive Environmental Cleanup and Responsibility Act, or CECRA, a party can be held liable without regard to fault if the party falls within a statutorily-defined category. Joint and several liability provides that any liable person can be held responsible for all remedial action costs at a facility.

Senate Bill 382, passed in the 1995 legislature, required the Department of Environmental Quality to study the joint and several liability provisions in CECRA, which is the state superfund law. Specifically, the 1995 legislation required the department to:

> "Institute a collaborative process involving all affected and interested parties that specifically analyzes the elimination of joint and several liability with respect to cleanup of state CECRA sites and any related funding necessary to clean up state CECRA sites as a result of eliminating joint and several liability. DEQ shall submit a report and legislative proposals that collaboratively resulted from that process to the 55th legislature."

Pursuant to this legislation, the DEQ contracted with the Montana Consensus Council to develop a collaborative study on joint and several liability. The purpose of the study was to analyze the strengths and weaknesses of joint and several liability with respect to CECRA sites in Montana, and alternative liability schemes and sources of funding to clean up state superfund sites.

## Study Process

Based on interviews with interested and affected parties, the Consensus Council established a study committee consisting of four caucuses:

- Environmental and public interest groups
- Industry and business
- State and federal governments
- Local governments

Tribal governments declined the opportunity to participate. The state and federal government caucus included the Department of Environmental Quality, departments with RIT-funded programs (e.g., the Department of Natural Resources and Conservation), the Office of the Attorney General, the U.S. Environmental Protection Agency, the U.S. Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the Department of Housing and Urban Development, and the U.S. Army Corps of Engineers.

A study committee, consisting of four to five members of each caucus, met four times between October 1995 and February 1996 to discuss and evaluate strict, joint, and several liability and other liability structures used by other states and by the U.S. Environmental Protection Agency.

From February to December 1996, a coordinating committee of one to two representatives from each caucus met frequently to discuss alternative liability schemes that would be fairer than joint and several liability. In December 1996 the coordinating committee finished the working documents on the controlled allocation of liability option and funding options for orphan shares. These documents, prepared in the collaborative process, form the basis for the consensus legislation provided in SB377.

## Alternative to Joint and Several Liability

Although the 54th legislature required the DEQ to analyze elimination of joint and several liability and the associated costs, the study committee developed the liability apportionment option as a complement to joint and several liability. The committee determined that joint and several liability should be retained as a default option for DEQ enforcement under CECRA, if necessary. If PLPs choose the controlled allocation of liability provided in SB377 and they follow the procedures and requirements for controlled allocation process, they may be exempt from strict, joint, and several liability.

The controlled allocation of liability process will result in an orphan share of cleanup costs for many facilities. As defined in SB377, orphan share costs are those attributed to defunct or bankrupt liable persons who are not affiliated with any viable person. Any orphan share costs, therefore, will be borne by the state of Montana.

## Management and Payment of Orphan Shares

Under the current joint and several liability system the state incurs orphan share costs for remedial actions at some facilities; however, private entities bear the majority of those costs, usually 100

percent regardless of fault or contribution. The controlled allocation of liability option will increase the state's responsibility for covering orphan shares because it redistributes financial burden for site remediation among the state and private entities.

As an example, with the current system of joint and several liability, the department's projections of orphan share costs for 39 CECRA sites for which costs could be estimated range from $8 million to $20. The DEQ's projections for orphan share costs for these same 39 sites under a controlled allocation of liability option are projected to increase to a range of $42 million to $48 million, assuming that the controlled apportionment of liability option is used on all 39 sites and there is an orphan share on all 39 sites. These estimates and the projected expenditure time frames are provided in the fiscal note for SB377.

If this legislation passes, the DEQ will manage the orphan share state special revenue account created in this bill. The orphan share account will be used exclusively to reimburse the orphan's share of remedial action costs for a facility and to represent the orphan's share during the liability allocation process, as provided in the bill.

## Statement of Support for the Bill

The DEQ supports SB377 because it provides:

- A fair alternative to strict, joint, and several liability that encourages cleanup of CECRA sites without one party bearing the entire cleanup costs if multiple PLPs and an orphan share have been identified.

- Assurances that remedial actions will be accomplished in a reasonable time frame, rather than slowing down or stopping during liability allocation.

- A process for settlement of costs between multiple PLPs, including potential orphan shares, without prolonged and cumbersome litigation or court action.

Mr. Chairman and members of the committee, thank you for hearing my testimony on behalf of the DEQ today. I will be available for questions.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MARC RACICOT, GOVERNOR

STATE OF MONTANA

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# Briefing Paper on SB377
# Prepared by the Department of Environmental Quality

Senate Bill 377 provides an alternative to joint and several liability for potentially liable persons (PLPs) to determine their proportionate share of liability for remedial actions at a state superfund facility through an expedited and controlled process contemporaneous with remedial actions at the subject facility.

## 1.0 Background and Purpose

Under the existing system of strict, joint, and several liability, a party can be held liable without regard to fault if the party falls within a statutorily-defined category. Joint and several liability provides that any liable person can be held responsible for all remedial action costs at a facility. The controlled allocation process will result in an orphan share[1] of cleanup costs for many facilities, which will be borne by the state of Montana. If PLPs follow the procedures and requirements for the controlled allocation of liability option, they may be exempt from strict, joint, and several liability.

Senate Bill 382, passed in the 1995 legislature, required the Department of Environmental Quality (DEQ) to study the liability provisions in the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) (the state superfund law) with oversight from the Environmental Quality Council. Specifically, this legislation required the DEQ to:

> "Institute a collaborative process involving all affected and interested parties that specifically analyzes the elimination of joint and several liability with respect to cleanup of state CECRA sites and any related funding necessary to clean up state CECRA sites as a result of eliminating joint and several liability. DEQ shall submit a report and legislative proposals that collaboratively resulted from that process to the 55th legislature."

The DEQ contracted with the Montana Consensus Council to develop the collaborative study. Based on interviews with interested and affected parties, the Consensus Council established a study committee consisting of four stakeholder groups: public and environmental interest groups; industry

[1] Orphan share costs are those attributed to defunct or bankrupt liable persons who are not affiliated with any viable person.

and business; state and federal governments; and local governments. Tribal governments declined the opportunity to participate.

These stakeholders met once a month from November 1995 to February 1996. Between February and December 1996 representatives of each stakeholder group (the coordinating committee) met frequently to discuss liability and funding alternatives for orphan share remedial action costs. In November and December 1996 these representatives collectively finalized working documents that describe the controlled allocation of liability alternative and short- and long-term funding options for orphan share remedial action costs at CECRA sites.

Although the 54th legislature required the DEQ to analyze elimination of joint and several liability and the associated costs, the study committee developed the liability apportionment option as a complement to joint and several liability. The committee determined that joint and several liability should be retained as a default option for DEQ enforcement under CECRA, if necessary.

The working documents on liability apportionment and orphan share funding form the basis for this consensus legislation, which is presented collaboratively to the legislature by the four stakeholder groups who participated in the study, including the DEQ. Although each caucus made many concessions during the study to see this bill come to fruition by the 55th legislative session, they agree that this is good legislation for several reasons. SB377 provides:

- A fair alternative to strict, joint, and several liability that encourages cleanup of CECRA sites without one party bearing the entire cleanup costs if multiple PLPs and an orphan share have been identified.

- A requirement for a lead PLP who will proceed with remediation at a facility while negotiating liability apportionment with the other PLPs and with the state in defense of the orphan share.

- A process for settlement of costs between multiple PLPs without litigation or court actions.

- Assurances that remedial actions will be accomplished in a reasonable time frame, rather than slowing down or stopping during the liability allocation proceedings.

- A framework and authority for rulemaking to establish clear procedures that the DEQ must follow for listing and delisting CECRA sites.

## 2.0 Controlled Allocation of Liability

The liability allocation process has been designed to last approximately 12 months without extensions or appeals, depending on how long discovery takes and whether an allocator is necessary to assist with the proceedings or if the participants negotiate a settlement on liability apportionment without involving an allocator. A time line showing the steps involved and the time line for this process is attached and key elements are discussed below.

### 2.1 Eligibility

Eligibility criteria for the controlled allocation option (new section 28) are as follows:

- Any site on the CECRA priority list is eligible.
- Remedial action costs incurred before the date of petition are ineligible.
- A PLP may only petition once per facility to participate in the controlled allocation process, unless (1) new information becomes available or (2) the facility has distinct units or parcels that will be cleaned up in different phases, and (3) there is no orphan share.
- Only remedial action costs can be allocated and are eligible for reimbursement from the orphan share account; attorney fees, legal costs, and remedy operation and maintenance costs cannot be allocated or reimbursed.
- Current or future National Priorities List (NPL) sites (i.e., federal superfund sites) and natural resource damages are ineligible.

### 2.2 Process Initiation

A written petition to the DEQ is required to begin the liability allocation process under this act (new section 29). The allocation process can be initiated and can proceed upon written petition of one or more PLPs. Petitions will be addressed in the order received. Petitions can be submitted for the following facilities with the noted provisions:

- A facility where the DEQ issued a notice letter before the effective date of this legislation. If remedial actions began before passage of this legislation, only remedial actions costs incurred from the date of the petition are eligible for liability apportionment.

- A facility where the DEQ has not issued a notice letter, but a voluntary cleanup plan has been approved. Only remedial action costs incurred after the date of petition are eligible for liability apportionment.

- A facility where the DEQ issues a notice letter after the effective date of this legislation. Sixty days from the date of the notice letter, the noticed PLP may petition the DEQ for liability allocation, and may name other PLPs who were not noticed and provide information that shows that the nominated entity is potentially liable.

If there is a potential orphan share at a facility where liability will be allocated, the DEQ will represent the orphan share during the allocation. To manage the DEQ's workload and effectively defend an orphan share, allocation is only allowed on five facilities at a time. Other petitions may be stayed before the discovery stage (described below) and processed in the order received after a settlement has been reached and liability apportioned on one or more of previous five petitions. A petition will not be stayed if the PLPs participating in the allocation process agree in writing that there is no orphan share and that the state is not potentially liable.

## 2.3 Designation of a Lead PLP

A designated lead PLP will implement the remedial actions required by the DEQ. The lead PLP will be designated by the noticed persons for each facility within 30 days of the date of a notice letter, unless the PLPs inform the DEQ that a 30-day extension is needed. An extension may be granted if good cause is shown. If a lead PLP has not been identified within these time frames, the DEQ will designate a lead.

The lead PLP is responsible for carrying out the remedial actions required by the DEQ and must comply with the terms of the notice letter, order, stipulated agreement, or approved remedial action plan to remain eligible for the apportioned liability option. If the lead PLP fails to comply, the DEQ will take enforcement actions available under CECRA to compel compliance at maximum- and high-priority sites. For medium- to low-priority sites, the DEQ may enforce compliance, but such action is not required for these sites.

## 2.4 Allocation of Liability

The allocation process begins with discovery. Discovery is restricted to a maximum of 90 to 120 days for each PLP (including the state if there is an orphan share). As noted above, the DEQ will only participate in five allocation proceedings at one time and will stay additional petitions opting for this process at the discovery stage until one or more of the first five allocation proceedings have been completed.

Before proceeding with a formal allocation process with an allocator, the parties are expected to conduct good faith settlement negotiations to apportion liability among themselves. If they cannot agree on liability apportionment within 30 days after discovery closes, they must select an allocator. SB377 identifies several requirements for selection of an allocator, including disclosure of potential conflicts of interest and all participating persons must agree on the allocator. If the parties are unable to agree on an allocator within 30 days, an allocator will be appointed by a district court in the county where contaminated site is located or where any PLP resides or has a principal place of business or by the first judicial district.

The PLPs participating in the allocation process are required to submit to the allocator and to each other a position statement and exhibits to identify the factors that the PLP believes are relevant to allocation of liability for the facility. The allocator can collect additional information through interviews with the PLPs or their representatives, and by request to the DEQ. Each participating and nonparticipating PLP's share of liability is to be allocated based on information presented or collected during the allocation process and, considering facility characteristics, apportion liability on a percentage basis according to 12 fault-oriented factors [new section 34, (5)(a) through (5)(l) of SB377].

Within 60 days of selection or appointment, the allocator will submit to the DEQ and all noticed or nominated PLPs a report that documents each PLP's share of liability and the rationale thereof. Within 30 days of the date of that report, the PLPs are to prepare and sign a stipulated agreement covering the proportionate share of liability for each PLP, how remedial actions will be conducted, provisions for reimbursement from the orphan share account, contribution protection, and covenants not to sue.

A PLP who did not participate in the allocation proceeding but was assigned a portion of liability for remedial actions at a facility may sign the stipulated agreement. Any liable person who signs the stipulated agreement and fails to comply with the terms of that agreement is required to pay a penalty of 2 times the amount of that person's proportionate share of liability in addition to that person's share of remedial action costs.

A person may appeal the allocator's decision within 30 days of the allocation report. The venue for an appeal lies in the county of Montana where the subject facility is located, where the PLP resides or has a principal place of business, or in the district court of the first judicial court. The allocator's decision must be upheld unless the person who is filing the appeal can demonstrate that the decision was made upon unlawful procedure, affected by other error in the law, clearly erroneous in light of the evidence on the record, or arbitrary and capricious.

### 2.5 Default to Strict, Joint, and Several Liability

The following actions may cause a PLP to remain subject to the existing system of strict, joint, and several liability (75-10-715, MCA).

- A PLP discontinues participation in the liability allocation after initiating the process.
- A lead PLP fails to comply with the requirements of a notice letter, order, stipulated agreement, or other approved remedial action plan, unless the lead PLP can establish that the noncompliance is due to good cause or another PLP assumes the lead role.
- A PLP is unresponsive to a discovery request or does not participate in an allocation proceeding and is allocated a share of liability.
- Failure to execute or sign a stipulated agreement.

## 3.0 Creation of an Orphan Share Account

If this legislation passes, the DEQ will manage the orphan share state special revenue account established in this bill (new section 24). (Appropriation to the orphan share state special revenue account is provided in HB584.) The orphan share account will be used exclusively to reimburse the orphan's share of remedial action costs for a contaminated site and to defend the orphan share in concert with the PLPs involved during the liability allocation process.

Remedy construction and removal actions must be completed before a claim can be reimbursed, except for hardship cases. If a PLP demonstrates it is unable to complete remedial actions at a facility because of financial hardship, a claim can be submitted for partial cleanup and may be reimbursed to help finance and facilitate timely completion of cleanup at that facility. To receive early reimbursement, a PLP must be in substantial compliance with all remedial action plans approved by the DEQ.

Reimbursement of orphan share costs is dependent upon the orphan share account balance. The orphan share costs will be reimbursed in the order of claims received by the DEQ. The state is not required to reimburse orphan share costs if the account balance is insufficient and no interest will accrue on unpaid claims.

If the orphan share account balance is sufficient, the DEQ will pay orphan share defense costs from the account; however, if the balance is insufficient, the PLPs will pay the orphan share defense costs in proportion to each PLP's share of liability. The PLPs may be reimbursed for payment of orphan share defense costs if additional sufficient funds become available.

## 4.0 State Liens

If an orphan share has been reimbursed by the state, an owner cannot profit from the state's payment for cleanup of a contaminated property. SB377 includes a provision for the DEQ to file a lien when state funds are used to cover the orphan share costs and the fair market value of the property has increased as a result of the cleanup. The lien will be the lesser of either the increase in value or the amount of funds actually expended by the state. Any lien payment would be deposited into the orphan share account (or the environmental quality protection fund if state funds were drawn on that account).

## 5.0 Sunset Provision

The controlled allocation of liability alternative terminates on June 30, 2005. The combined effect of requiring cleanup while liability is being allocated and the 8-year life of this legislation will be an incentive for PLPs to cleanup of tens of CECRA sites because of the new opportunity to share the costs with other PLPs, including the orphan share. These incentives are not provided under the current strict, joint, and several liability system which often requires a PLP to pay more than its share of the remedial action costs and then file a contribution action against other PLPs to receive reimbursement.

## 6.0 Other Revisions to CECRA

SB377 includes other clarifications and amendments to CECRA to make the law more effective and to complement the controlled allocation of liability process. These revisions are summarized below.

### 6.1 Listing and Delisting Rulemaking

Section 17 (page 19 of SB377) authorizes the DEQ to adopt rules under CECRA, particularly for listing, delisting, and prioritizing sites on the CECRA list. This legislation specifies the requirements and provisions for listing/delisting rules, including a requirement for the DEQ to involve and address comments from business and industry and the public on proposed listing and delisting of sites.

Until now the DEQ has relied on a policy to determine whether a facility should be included on the CECRA list; however, there has been limited public involvement in the decision process. The amendments on the department's rulemaking authority and the newly promulgated rules for listing and delisting rulemaking will be an improvement over past practices.

## 6.2 Defenses and Exclusions to Liability

Section 19 of SB377 clarifies defenses to being held jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility. Specifically, SB 377 clarifies that transporters of household waste may have a defense unless that person knew or should have known that the hazardous or deleterious substance was in the refuse.

Section 19 also adds exclusions from liability, which are not currently in CECRA. Exclusions have been added for: (1) generators or disposers of household waste; (2) owners or operators (residences or businesses) above a groundwater contaminant plume emanating from another facility; (3) residential property owners of 20 acres or less. Exclusions are not applicable to (1) persons who would otherwise be liable under CECRA; (2) an owner or operator who does not cooperate with the DEQ and PLP during remedial actions; or (3) contamination was visible at the time when residential property was purchased. A person will be liable if the DEQ provides substantial credible evidence that the person fails to satisfy any exclusion provision contained in the legislation.

## 6.3 Deminimis and Demicromis Settlements

At any time during allocation of liability by an allocator, the DEQ may enter into settlement agreements with a PLP who meets certain criteria (Section 20). The settlement provisions contained in SB377 are designed for facilities with multiple generators or transporters, such as a municipal landfill. Deminimis and demicromis settlements will not increase the amount of the orphan share.

The DEQ may enter into a demicromis settlement with a person if substantial credible evidence is presented that shows the person contributed less than 0.002 percent of the total volume or 110 gallons or 200 pounds of materials containing hazardous or deleterious substances, whichever is greater, at a facility that received hazardous or deleterious substances from multiple contributors.

The DEQ may enter into a deminimis settlement with a person if substantial credible evidence is presented that shows the person contributed less than 5 percent of the total volume of waste disposed of or treated at a facility that received hazardous or deleterious substances from multiple contributors. A person who satisfies the criteria for a particular defense could also be eligible for a deminimis settlement.

For both deminimis and demicromis settlements, the DEQ will consider the toxicity of the substance contributed by the person when negotiating the settlement.

Any person involved in a deminimis settlement may be required to pay costs and penalties as follows:

- With a reopener clause, the DEQ may require cash compensation for a deminimis settlement provided the compensation does not exceed 2 times the DEQ's reasonable projection of that person's liability at a facility.

- If the parties settling do not want a reopener clause, the settlement may include a premium such as 4 times the projected amount of the person's liability.

Any funds received as a result of a deminimis or demicromis settlement for a particular facility will be paid in the following order of priority:

- To the DEQ as reimbursement for remedial action costs.

- To PLPs as reimbursement for remedial action costs. If liability is allocated for the subject facility, the reimbursement must be in proportion to each PLPs share of liability as determined by the allocator,

- To the orphan share account if liability for remedial action has been allocated.

- To the environmental quality protection fund if liability for remedial actions has not been allocated.

## 7.0 Extension of the Mixed-Funding Pilot Program

SB377 includes an extension of the mixed-funding pilot program, which was amended into SB382 near the end of the 54th legislative session. In the 55th legislature, HB3 includes a supplemental appropriation of $900,000 for the DEQ to reimburse PLPs who participated in the mixed-funding pilot program. Under the statute, a PLP can be reimbursed for remedial action costs of up to $300,000 for one of three high-priority abandoned mine sites in Montana and the remedial actions must be completed before reimbursement can be made. The revenues are held in the abandoned mine state special revenue account that was created by SB382 to fund the mixed-funding pilot program.

One PLP has completed remedial actions at a site in Helena, Joslyn Street Tailings, and has negotiated with the DEQ for reimbursement of a portion of its remediation costs. If HB3 passes, this PLP will receive $300,000 from the abandoned mine state special revenue account as reimbursement for part of the cleanup costs at Joslyn Street Tailings.

Two additional PLPs have expressed interest in the program for remedial actions at Corbin Flats (in Jefferson County) and the Block P Mill (near Hughesville), but cleanup plans for these sites have not been completed or approved by the DEQ. By current statute, the mixed-funding pilot program will expire on June 30, 1997. To allow these PLPs to benefit from the mixed-funding pilot program,

SB377 extends the date for reimbursement (for Corbin Flats and Block P Mill only) to June 30, 1999, provided the DEQ has approved a voluntary cleanup plan for each site by June 30, 1997. If these deadlines are not met and if SB377 passes, the unencumbered balance of the abandoned mine state special revenue account would be deposited into the orphan share account.

## SB 377
## Controlled Apportionment of Liability Option
## Time Line

| | | |
|---|---|---|
| Step 1 | No time limit | DEQ issues notice letters. |
| Step 2 | 90 days | PLPs have 60 days to identify other PLPs. DEQ has additional 30 days to issue new notice letters or letters of nomination. |
| Step 3 | 90 days | PLPs conduct discovery. The state participates if there is a potential orphan share. |
| Step 4 | 30 days | PLPs conduct pre-allocation negotiations, if desired. |
| Step 5 | 30 days | PLPs or DEQ select an allocator if negotiations fail. |
| *Extension* | 30 days | PLPs have one 30-day extension, if necessary, to conduct steps 3, 4, and 5. |
| Step 6 | 60 days | Liability is allocated and the allocator submits an "Allocation Report." |
| *Extension* | 30 days | One 30-day extension allowed, if necessary, for step 6. |
| Step 7 | 30 days | PLPs enter into a stipulated agreement per the allocation report or appeal the allocator's decision. |
| | | Investigation and cleanup activities adjusted per the stipulated agreement. |

exhibit #3
SB397
3/10/97

# SAFEGUARDS

- STRICT, SEVERAL, AND JOINT AS DEFAULT

- EMERGENCY ACTION PROVISIONS

- COMPLIANCE REQUIRED

- CLEANUP OCCURS SIMULTANEOUSLY WITH APPORTIONMENT

- CLEANUP OCCURS REGARDLESS OF ORPHAN SHARE FUNDS

Dingman

## ELIGIBILITY

- CECRA PRIORITIES LIST SITES

- 3 TRIGGERS
  1) past notice letter sites
  2) future notice letter sites
  3) voluntary cleanup sites

- NO FEDERAL SUPERFUND SITES

- NO NATURAL RESOURCE DAMAGES

- NO PAST COST

## CONTROLLED APPORTIONMENT OPTION

| | | |
|---|---|---|
| STEP 1 | Notice letters issued | |
| STEP 2 | 30 days | Lead PLP designated |
| | 30 days | Other parties nominated |
| | 30 days | Additional PLPs noticed |
| | (30 day extension) | |
| STEP 3 | 90 days | Discovery conducted |
| | (30 day extension) | |
| STEP 4 | 30 days | Pre-Allocation negotiation conducted |
| STEP 5 | 30 days | Allocator selected |
| STEP 6 | 60 days | Allocation completed |
| | (30 day extension) | |
| STEP 7 | 30 days | Stipulated agreement completed or allocation appealed |

## OTHER MAJOR PROVISIONS

- SETTLEMENT OPPORTUNITY

- EXCLUSIONS

    1) household waste
    2) property overlying contaminated aquifers
    3) residential property owner

- LISTING/DE-LISTING PROCEDURE

- SUNSET PROVISION

- CITIZEN SUIT PROVISION

- DEQ'S ROLE IN DEFENDING ORPHAN SHARE

# FUNDING

- ORPHAN SHARE FUND

- SHORT TERM FUNDING
  1) metalliferous mine tax
  2) RIT tax revenue and/or interest
  3) DEQ fines/penalties

- PROJECT FUNDING
  1) reclamation and development grants
  2) federal funding

- RECOMMENDATIONS FOR LONG-TERM FUNDING
  1) RIT Study
  2) hazardous substance tax

MISSOULA COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
MISSOULA VALLEY WATER QUALITY DISTRICT
301 W ALDER ST
MISSOULA, MONTANA 59802-4123

PHONE (406) 523-4890 FAX (406) 523-4781

exhibit #4
SB377
3/10/97

**Testimony on SB 377**
**House Natural Resources Committee - March 10, 1997**
**Peter Nielsen - Acting Environmental Health Director**
**Missoula City-County Health Department**

I have represented the Missoula City-County Health Department and the Local Government Caucus during the past year and one half in the Consensus Council's project regarding the state Superfund Program. On behalf of the Local Government Caucus and the Missoula City-County Health Department I am pleased to testify in support of SB 377.

The Local Government Caucus included the following representatives, besides myself:

- Gordon Morris, Montana Association of Counties
- Jon Sesso, Butte/Silver Bow Planning Office
- Rebecca Dupuis, Montana Environmental Health Association
- Barry O'Connell, City of Bozeman
- Ron Hanson, Powell County Planner

In addition, the following persons participated in the study and in caucus meetings:

- Alec Hansen, Montana League of Cities and Towns
- Albert Molgnoni, Rocker Water and Sewer District
- Cheryl Beaty, Anaconda Deer Lodge County
- Vivian Drake, Lewis and Clark County Water Quality District

The Local Government Caucus was open to involvement of any local government interests in Montana, and many efforts were made to inform others of the process and to invite their participation.

As you know, our Department and other local governments testified in opposition to SB 382 in the 1995 Legislature. Our concerns included that the bill would have not provided sufficient funding for orphan shares, and that there was no requirement to commence or complete cleanup at sites that may have become part of the orphan share program. This would have resulted in many sites stagnating in our communities, resulting not only in potential health and environmental affects but also in serious economic impacts to local communities and local governments. **Hazardous waste sites which are not cleaned up or not effectively cleaned up, can result in financial impacts including lost residential and commercial real estate sales, lost economic development and development opportunities, diminished property tax collections and devalued real estate values in neighboring areas.** Avoiding these potential impacts was paramount for the local government caucus in our participation in the consensus process that resulted in this bill.

The provisions of Section 30 of this bill were intended to address these concerns. This section provides for emergency remedial action at a site, regardless of its status in a controlled allocation proceeding. It also provides for designation of a lead responsible party, and requires that party to proceed with remedial actions including investigation and cleanup, concurrent with the allocation proceedings. And, importantly, it provides for Department enforcement to ensure that all remedial actions are taken while an allocation proceeding is conducted. These provisions will ensure that action is taken in a timely fashion at maximum and high priority sites, that our communities will not suffer potential health or environmental impacts and that local governments will not suffer adverse economic impacts from delayed cleanup action. The Local Government Caucus' support of this bill is very much contingent on the provisions contained in Section 30.

I'd like to clarify that the local government caucus supports the proposed funding sources for the orphan share fund, but that we are aware that these sources are not expected to provide sufficient funds to pay for the orphan shares at all sites that will be eligible in coming years. Our study documents indicate that as such as $11 million could be required in the next five years to pay for orphan shares at 18 sites. As much as $18 million could be required at an additional 8 sites in the next ten years. $19 million could be required for an additional 13 sites in the next ten years. This is based only on existing sites. We expect that additional sites may be designated in coming years, and that the existence of the orphan share fund may in effect create an additional demand for dollars in that fund to clean up additional sites. It appears that at least $2 million per year could be required for orphan shares at CECRA sites. However, the current funding mix is expected to provide much less than that amount. We are not confident that the proposed use of environmental penalties will result in the $300,000 per year projected by the study committee. We are also not confident that all other sources identified will result in the amount of income projected. Even if all of the sources of funding projected come through, it appears that the orphan share fund will have approximately one-half of the amount needed to pay for orphan shares at currently identified sites.

This, naturally, has raised a strong concern in the local government caucus that the creation of this program and the orphan share fund will result in strong pressure to tap other funding sources in future legislative sessions. We are in particular concerned with potential proposals to divert funds from the RIT Trust, which funds many very important projects for small communities in Montana. Projects funded through grant programs funded by the RIT Trust strongly benefit public health, safety and welfare and the environment. The Study committee for this project recognized this potential constraint of funding for beneficial projects, and recommend that the Legislature carefully consider the effects of eliminating such funding and consider alternative sources of funding if RIT funds are diverted into the orphan share fund.

The Local Government Caucus supports this bill and its proposed funding mechanisms, but recognizes that the funding will not be sufficient. We do not support anticipated proposals to divert RIT funds to the orphan share fund. Even without the orphan share funding aspect of the bill, the controlled apportionment process will be a significant step forward in improving the process for cleaning up major contaminant sites in Montana.

Exhibit #5
SB 377
3/10/97

Amendments to Senate Bill No. 377
3rd Reading Copy - blue copy

Requested by Senator Grosfield
For the House Committee on Natural Resources

Prepared by Larry Mitchell
March 10, 1997

1. Page 5, line 8.
Strike: "if there are sufficient unallocated funds remaining,"
Following: "year"
Insert: ","

Exhibit #6
SB 332
3/10/97

# TESTIMONY ON SENATE BILL 332

Jan P. Sensibaugh
Permitting and Compliance Division
Department of Environmental Quality

Mr. Chairman, members of the committee, my name is Jan Sensibaugh and I represent the Department of Environmental Quality. The department supports this bill. This bill would require that tire landfills and resource recovery facilities for waste tires would have to provide a financial assurance for closure. Financial assurance for closure costs is already required of regular municipal landfills, and the department thinks it proper that tire facilities be covered also. This bill would also insure that a person could not accumulate a large number of tires and then abandon them or go out of business without leaving funds behind for cleanup.

The department can accommodate the requirements in this bill with no increase in staff and no increase in appropriation.

Thank you for the opportunity to comment and I am available to answer any questions.

HOUSE NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 3/10/97

| NAME | Yes | No | Comment |
|---|---|---|---|
| Rep. Bill Tash (VC Maj.) | ✓ | | |
| Rep. Hal Harper (VC Min.) | ✓ | | left |
| Rep. Bob Raney | ✓ | | |
| Rep. Jon Ellingson | ✓ | | |
| Rep. Aubyn A. Curtiss | ✓ | | |
| Rep. Carley Tuss | ✓ | | |
| Rep. Trudi Schmidt | ✓ | | |
| Rep. Emily Swanson | ✓ | | |
| Rep. Robert R. Story, Jr. | ✓ | | |
| Rep. Haley Beaudry | ✓ | | |
| Rep. Douglas T. Wagner | ✓ | | |
| Rep. Doug Mood | ✓ | | |
| Rep. Scott J. Orr | ✓ | | |
| Rep. Cliff Trexler | ✓ | | |
| Rep. Lila V. Taylor | ✓ | | |
| Rep. Jay Stovall | ✓ | | |
| Rep. Karl Ohs | ✓ | | left |
| Chairman Dick Knox | ✓ | | left |

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

NATURAL RESOURCE COMMITTEE BILL NO. SB 377

DATE: 3/3/15 SPONSOR(S) _____

**PLEASE PRINT LEGIBLY**

| NAME & ADDRESS | REPRESENTING | BILL | PROPONENT | OPPONENT | INFORMA-TION WITNESS |
|---|---|---|---|---|---|
| Hugh + Barbara | MT Mining Assn | SB 377 | ✓ | | |
| John P. Davis | Poore, Roth & Robinson PC | SB 377 | ✓ | | |
| [illegible] | DEQ | SB 377 | ✓ | | |
| [illegible] | MT Mining | 377 | ✓ | | |
| Steve Pilcher | W.E.T.A | SB377 | ✓ | | |
| Anne Hedges | MEIC | SB 377 | ✓ | | |
| [illegible] | [illegible] | SB 377 | ✓ | | |
| [illegible] | [illegible] | SB 377 | ✓ | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON NATURAL RESOURCES

**Call to Order:** By Chairman Dick Knox, on April 2, 1997, at 3:10 p.m., in Room 437

### ROLL CALL

**Members Present:**

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Douglas T. Wagner (R)

**Members Excused:** none

**Members Absent:** Rep. Carley Tuss (D)

**Staff Present:** Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

**Committee Business Summary:**

| | | |
|---|---|---|
| Hearing(s) & Date(s) Posted: | | SB 337 (3/26), SB 342 (3/26) |
| Executive Action: | | SB 273 (18-0) DO CONCUR as AMENDED, SB 337 (16-1) DO CONCUR, SB 342 (16-0) DO CONCUR as AMENDED, SB 339 (16-2) DO CONCUR as AMENDED, SB 377 (18-0) DO CONCUR as AMENDED, SB 315 was discussed and Subcommittee is working on amendments executive action was further deferred until 4/4, SB 334 (10-8) was TABLED |

**Rep. Knox asks for the SB 273 subcommittee to report. Rep. Story informs the Committee that Rep. Harper has inform about the Bill and will present it to the Committee when he returns.**
*{Tape: 2; Side: b; Approx. Time Count: 22.9; Comments: none.}*

## EXECUTIVE ACTION ON SB 315

**Rep. Knox asks the Subcommittee to raise and report on SB 315.**

**Rep. Mood** provides the Committee with background information on the situation in Granite county as well as pictures he took on 4/1 of the container sites. Rep. Mood discusses a solution to the current problem and language that he'd like to amend into the Bill.
*{Tape: 2; Side: b; Approx. Time Count: 23.8; Comments: none.}*

**Rep. Swanson** supports Rep. Mood and his solution, adds that he did a great job.
*{Tape: 2; Side: b; Approx. Time Count: 29.4; Comments: none.}*

**Rep. Knox** asks **Mr. Dillard of DEQ** to comment on the proposed amendments. **Mr. Dillard comments.**
*{Tape: 2; Side: b; Approx. Time Count: 32.1; Comments: none.}*

**Rep. Mood continues his discussion.**
*{Tape: 3; Side: a; Approx. Time Count: 0.1; Comments: none.}*

**Rep. Raney** feels the amendments still need work, but its a workable solution.
*{Tape: 3; Side: 6.8; Approx. Time Count: none; Comments:*

**Rep. Knox** decides to suspend action until Friday (4/4).
*{Tape: 3; Side: a; Approx. Time Count: 9.6; Comments: none.}*

## EXECUTIVE ACTION ON SB 377

**Motion**: Rep. Beaudry moves DO CONCUR
*{Tape: 3; Side: a; Approx. Time Count: 10.5; Comments: none.}*

**Amendments**: Rep. Beaudry offers amendments sb037702.akw and moves the amendments

**Discussion**: Rep. Beaudry discusses the proposed amendments
*{Tape: 3; Side: a; Approx. Time Count: 13.2; Comments: none.}*

**Motion/Vote**: Question is called for, (17-0) amendment is adopted **Rep. Knox submits and moves two more amendments.**

**Motion/Vote**: A Question is called for,(17-0) amendment is adopted
**Motion/Vote**: Rep. Beaudry moves the Bill DO CONCUR as amended, Question is called for, (17-0) motion carries, Rep. Beaudry will carry the Bill on the House floor

# HOUSE STANDING COMMITTEE REPORT

April 3, 1997



Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 377** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
*Dick Knox, Chair*

**And, that such amendments read:** **Carried by: Rep. Beaudry**

1. Title, line 7.
Strike: "FINES, PENALTIES,"

2. Title, lines 12 and 13.
Strike: "75-2-412" on line 12 through "75-10-542," on line 13

3. Title, line 14.
Following: "75-10-720,"
Insert: "AND"
Strike: "82-4-141, AND 82-4-241,"

4. Page 3, line 26.
Strike:"27"
Insert: "13"

5. Page 5, line 8.
Strike: "if there are sufficient unallocated funds remaining,"
Following: "year"
Insert: ","

6. Page 5, line 10.
Strike: "27"
Insert: "13"

7. Page 6, line 20.
Strike: "27"
Insert: "13"

4/3

Committee Vote:
Yes 18, No 0.

701236SC.Hgd

8. Pages 7 through 15.
Strike: Sections 4 through 15 in their entirety
Renumber: subsequent sections

9. Page 17, line 9.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

10. Page 17, line 11.
Strike: "27"
Insert: "13"

11. Page 22, line 10.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

12. Page 30, line 25.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

13. Page 30, line 26.
Strike: "34"
Insert: "20"
Strike: "35"
Insert: "21"

14. Page 30, line 28.
Strike: "27"
Insert: "13"

15. Page 30, line 29.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

16. Page 31, line 1.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

17. Page 31, line 3.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

18. Page 32, line 14.
Strike: "27"
Insert: "13"

19. Page 32, line 23.
Strike: "34"
Insert: "20"

20. Page 33, line 12 through page 34, line 5.
Strike: Sections 23 and 24 in their entirety
Renumber: subsequent sections

21. Page 34, line 19.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

22. Page 34, line 26.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

23. Page 34, line 30 through page 35, line 1.
Strike: subsection (b) in its entirety.
Renumber: subsequent subsections.

24. Page 35, line 2.
Strike: "34(12)"
Insert: "20(12)"

25. Page 35, line 11.
Following: ";"
Insert: "and"

26. Page 35, line 13.
Strike: ";"
Insert: "."

27. Page 35, lines 14 through 17.
Strike: subsections (j) and (k) in their entirety

28. Page 35, line 29.
Strike: "29"
Insert: "15"

29. Page 36, line 2.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

30. Page 36, line 9.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

31. Page 36, line 16.
Strike: "30"
Insert: "16"

32. Page 36, line 30.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

33. Page 37, line 3.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

34. Page 37, line 5.
Strike: "29"
Insert: "15"

35. Page 37, line 15.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

36. Page 37, line 18.
Strike: "34"
Insert: "20"

37. Page 38, line 13.
Strike: "31"
Insert: "17"

38. Page 38, line 15.
Strike: "34(9)"
Insert: "20(9)"
Strike: "35"
Insert: "21"

39. Page 38, line 17.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

40. Page 40, line 5.
Strike: "31"
Insert: "17"
Strike: "34"
Insert: "20"
Strike: "35"
Insert: "21"

41. Page 40, line 6.
Strike: "34"
Insert: "20"

42. Page 40, line 8.
Strike: "31"
Insert: "17"

43. Page 40, line 22.
Strike: "29"
Insert: "15"

44. Page 42, line 17.
Strike: "31"
Insert: "17"

45. Page 42, line 22.
Strike: "34"
Insert: "20"

46. Page 42, line 23.
Strike: "34"
Insert: "20"

47. Page 42, line 24.
Strike: "33"
Insert: "19"

48. Page 42, line 27.
Strike: "32"
Insert: "18"

49. Page 42, line 28.
Strike: "32"
Insert: "18"

50. Page 43, line 14.
Strike: "27"
Insert: "13"

51. Page 44, line 12.
Strike: "31"
Insert: "17"

52. Page 46, line 6.
Strike: "27"
Insert: "13"

53. Page 46, line 24.
Strike: "34"
Insert: "20"

54. Page 46, line 26.
Strike: "34"
Insert: "20"

55. Page 46, line 30.
Strike: "31"
Insert: "17"

56. Page 47, line 1.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

57. Page 47, line 2.
Strike: "31"
Insert: "17"

58. Page 47, line 3.
Strike: "26"

Insert: "12"
Strike: "36"
Insert: "22"

59. Page 47, line 4.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

60. Page 48, line 25.
Strike: "25"
Insert: "11"
Strike: "36"
Insert: "22"

61. Page 48, line 27.
Strike: "25"
Insert: "11"
Strike: "36"
Insert: "22"

62. Page 48, line 29.
Strike: "instructions"
Insert: "instruction"
Strike: "(1)"

63. Page 48, line 30.
Strike: the first "the" through "in"
Insert: "then"

64. Page 48, line 30 through page 49, line 1.
Strike: ", relating" on page 48, line 30 through "are" on page 49, line 1
Insert: "is"

65. Page 49, lines 2 through 7.
Strike: subsections (2) and (3) in their entirety

66. Page 49, line 9.
Strike: "25"
Insert: "11"
Strike: "36"
Insert: "22"

67. Page 49, line 10.
Strike: "25"
Insert: "11"
Strike: "36"
Insert: "22"

68. Page 49, line 16.
Strike: "17"
Insert: "5"

69. Page 49, line 19.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

-END-

HOUSE NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 4/2/97

| NAME | Yes | No | Comment |
|---|---|---|---|
| Rep. Bill Tash (VC Maj.) | ✓ | | |
| Rep. Hal Harper (VC Min.) | ✓ | | |
| Rep. Bob Raney | ✓ | | |
| Rep. Jon Ellingson | ✓ | | |
| Rep. Aubyn A. Curtiss | ✓ | | |
| Rep. Carley Tuss | | | absent |
| Rep. Trudi Schmidt | ✓ | | |
| Rep. Emily Swanson | ✓ | | |
| Rep. Robert R. Story, Jr. | ✓ | | |
| Rep. Haley Beaudry | ✓ | | |
| Rep. Douglas T. Wagner | ✓ | | |
| Rep. Doug Mood | ✓ | | |
| Rep. Scott J. Orr | ✓ | | |
| Rep. Cliff Trexler | ✓ | | |
| Rep. Lila V. Taylor | ✓ | | |
| Rep. Jay Stovall | ✓ | | |
| Rep. Karl Ohs | ✓ | | |
| Chairman Dick Knox | ✓ | | |

Amendments to **Senate Bill No. 377**
Third Reading Copy

Requested by **Rep. Beaudry**
For the Committee on Natural Resources

Prepared by Kathleen Williams
April 2, 1997

1. Title, line 7.
Strike: "FINES, PENALTIES,"

2. Title, lines 12 and 13.
Strike: "75-2-412" on line 12 through "75-10-542," on line 13

3. Title, line 14.
Following: "75-10-720,"
Insert: "AND"
Strike: "82-4-141, AND 82-4-241,"

4. Page 3, line 26.
Strike:"27"
Insert: "13"

5. Page 5, line 8.
Strike: "if there are sufficient unallocated funds remaining,"
Following: "year"
Insert: ","

6. Page 5, line 10.
Strike: "27"
Insert: "13"

7. Page 6, line 20.
Strike: "27"
Insert: "13"

8. Pages 7 through 15.
Strike: Sections 4 through 15 in their entirety
Renumber: subsequent sections

9. Page 17, line 9.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

10. Page 17, line 11.
Strike: "27"
Insert: "13"

11. Page 22, line 10.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

12. Page 30, line 25.
Strike: "26"
Insert: "12"
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Insert: "22"

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Strike: "34"
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Strike: Sections 23 and 24 in their entirety
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Strike: "26"
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Insert: "22"

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Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

23. Page 34, line 30 through page 35, line 1.
Strike: subsection (b) in its entirety.
Renumber: subsequent subsections.

24. Page 35, line 2.
Strike: "34(12)"
Insert: "20(12)"

25. Page 35, line 11.
Following: ";"
Insert: "and"

26. Page 35, line 13.
Strike: ";"
Insert: "."

27. Page 35, lines 14 through 17.
Strike: subsections (j) and (k) in their entirety

28. Page 35, line 29.
Strike: "29"
Insert: "15"

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Strike: "26"
Insert: "12"
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Insert: "22"

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Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

31. Page 36, line 16.
Strike: "30"
Insert: "16"

32. Page 36, line 30.
Strike: "26"
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Insert: "22"

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Strike: "instructions"
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66. Page 49, line 16.
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Insert: "5"

67. Page 49, line 19.
Strike: "26"
Insert: "12"
Strike: "36"
Insert: "22"

Amendments to **Senate Bill No. 377**
Third Reading Copy

Requested by **Rep. Knox**
For the Committee on Natural Resources

Prepared by Kathleen Williams
March 21, 1997

1. Page 48, line 30.
Strike: the first "the" through "in"
Insert: "then"

2. Page 48, line 30 through page 49, line 1.
Strike: ", relating" on page 48, line 30 through "are" on page 49, line 1
Insert: "is"